

Vol I

TRANSCRIPT OF RECORD

82

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 66

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL,  
ET AL.

No. 67

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL,  
ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
AND WABASH RAILWAY COMPANY.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT.

TRANSMITTED FOR CERTIFICATION FILED JANUARY 24, 1921.

CERTIFICATION AND RETURN FILED APRIL 4, 1921.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

**No. 278.**

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL,  
ET AL.

**No. 279.**

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL,  
ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
AND WABASH RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Page.
Caption to transcript from U. S. circuit court of appeals.....	a
Citation on appeal by Chicago, Milwaukee & St. Paul Ry. Co. et al. and acknowledgment of service.....	1
Citation on appeal by Des Moines Union Ry. Co. et al. and accept- ance of service.....	3
Caption to transcript from U. S. district court.....	3
Bill of complaint.....	3

Contract between Des Moines & St. Louis Ry. Co., Des Moines Northwestern Ry. Co., and St. Louis, Des Moines & Northern Ry. Co., January 2, 1882.....	4
Resolution for adoption of articles of incorporation of Des Moines Union Ry. Co., December 10, 1884.....	7
Articles of incorporation of Des Moines Union Ry. Co.....	8
Description of property covered by mortgage of Des Moines Union Ry. Co. to Central Trust Company as trustee.....	17
Contract between Des Moines Union Ry. Co. and Des Moines & St. Louis H. R. Co. et al., May 30, 1880.....	16
Contract of ratification between Des Moines Union Ry. Co., Walnut H. R. Co., and Des Moines Northern and Western H. R. Co., July 31, 1887.....	26
Subpoena in chancery to Des Moines Union Ry. Co. and marshal's return.....	26
Answer of the defendant Des Moines Union Ry. Co.....	28
Exhibit A—Articles of incorporation of Des Moines Union Ry. Co. as amended.....	48
Amended bill of complaint as amended.....	53
Description of property covered by mortgage of Des Moines Union Ry. Co. to Central Trust Company as trustee.....	72
Alleged amended articles of incorporation of Des Moines Union Ry. Co.....	85
Exhibit A—Contract between Des Moines & St. Louis Ry. Co., Des Moines Northwestern Ry. Co., and St. Louis, Des Moines & Northern Ry. Co., January 2, 1882.....	120
B—Articles of incorporation of Des Moines Union Ry. Co.....	123
Contract between Des Moines & St. Louis Ry. Co., Des Moines Northwestern Ry. Co., and St. Louis, Des Moines & Northern Ry. Co., January 2, 1882.....	123
C—Resolution of board of directors of Des Moines Union Ry. Co., January 1, 1885, for acceptance of transfer and management of certain property.....	130
D—Resolution of stockholders of St. Louis, Des Moines & Northern Ry. Co., January 1, 1885, authorizing transfer of certain property to Des Moines Union Ry. Co. under contract of January 2, 1882.....	131
E—Resolution of board of directors of St. Louis, Des Moines & Northern Ry. Co., November 5, 1887, authorizing transfer of certain property to Des Moines Union Ry. Co., under contract of January 2, 1882.....	132
F—Resolution of stockholders of Des Moines Northwestern Ry. Co., January 1, 1885, authorizing transfer of certain property to Des Moines Union Ry. Co. under contract of January 2, 1882.....	134
G—Resolution of stockholders of Des Moines & St. Louis H. R. Co., January 1, 1885, authorizing transfer of certain property to Des Moines Union Ry. Co. under contract of January 2, 1882.....	135



	Page
Exhibit H—Resolution of board of directors of Des Moines & St. Louis R. R. Co., November 8, 1887, authorizing transfer of certain property to Des Moines Union Ry. Co., under contract of January 2, 1892.....	137
I—Notice of Des Moines & St. Louis R. R. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of property, etc.....	139
J—Notice of St. Louis, Des Moines & Northern Ry. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of property, etc.....	140
K—Notice of Des Moines Northwestern Ry. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of property, etc.....	141
L—Jewell, James F. How, trustee, to Des Moines Union Ry. Co., November 19, 1887.....	143
M—Jewell, James F. How and wife to Des Moines Union Ry. Co., December 10, 1887.....	145
N—Jewell, James F. How, trustee, to Des Moines Union Ry. Co., April 28, 1888.....	147
O—Jewell, G. M. Dodge and wife to Des Moines Union Ry. Co., November 7, 1887.....	149
P—Contract between Des Moines Union Ry. Co. and Des Moines & St. Louis R. R. Co. et al., May 10, 1889.....	150
Q—Contract between F. M. Hubbard et al. and Chicago, Milwaukee & St. Paul Ry. Co., March 15, 1891..	150
R—Contract of ratification between Des Moines Union Ry. Co., Walworth R. R. Co., and Des Moines Northern and Western R. R. Co., July 31, 1897.....	166
Signature in controversy to Des Moines Union Ry. Co. et al. and marshal's return.....	173
Answer to amended bill of complaint.....	174
Preambles and resolutions adopted at first meeting of board of directors of Des Moines Union Ry. Co.....	178
Preambles and resolutions of board of directors of Des Moines Union Ry. Co., November 8, 1887.....	181
Exhibit I—Blue-print plat showing lines of railroad of the original Walworth Company, St. Louis Company, Northern Company, and Northwestern Company..	197
2—Articles of Incorporation of Des Moines Union Ry. Co. as amended.....	198
3—Petition in case of Des Moines Northern & Western R. R. Co. et al. vs. Joy et al., in district court of Polk County, Iowa.....	202
Exhibit A—Proposition of Polk Hubbard to purchasing committee of Walworth, St. Louis & Pacific Ry. Co., October 9, 1886.....	206
B—Acceptance of proposition of Polk & Hubbard by G. D. Ashley et al. as committee, etc., October 9, 1886.....	207

	Page.
Exhibit C—Agreement between Polk & Huddell and J. F. Joy et al. as purchasing committee, etc., September 10, 1907.....	207
Amendment to petition.....	210
Exhibit 4—Answer to petition in case of Des Moines Northern & Western R. R. Co. et al. vs. Joy et al. in district court of Polk County, Iowa.....	212
Exhibit 5—Judgment of district court, Polk County, Iowa, in case of Des Moines Northern & Western R. R. Co. vs. Joy et al.....	213
Stipulation for withdrawal from files of amendment to bill of complaint, filed November 9, 1912, and answer thereto, filed December 2, 1912, and for amendment of amended bill of complaint.....	214
Amendment to bill of complaint, filed December 29, 1912.....	215
Amendment to amended bill of complaint, filed May 13, 1915.....	215
Testimony for complainants.....	229
Testimony of Charles H. Hays.....	229
Exhibit S—Letter, O. D. Ashley, president, to F. M. Huddell, August 15, 1900.....	234
Exhibit T—Letter, F. M. Huddell to O. D. Ashley, president, August 19, 1900.....	235
Stipulation as to documentary evidence introduced.....	237
Exhibit U—Letter, J. C. Otteson, secretary, to F. M. Huddell, secretary, October 6, 1900.....	237
Exhibit V—Letter, F. M. Huddell, secretary, to J. C. Otteson, secretary, October 9, 1900.....	238
Testimony of Horace Swely.....	239
Complainants' exhibits.....	272
W—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., December 31, 1900.....	272
X—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., January 31, 1901.....	273
Y—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., February 28, 1901.....	274
Z—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., May 31, 1901.....	274
AA—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., December 31, 1901.....	275
BB—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., January 31, 1901.....	275
CC—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., February 28, 1901.....	276
DD—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., February 28, 1901.....	276
EE—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., March 31, 1901.....	277
FF—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., March 31, 1901.....	277
GG—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., May 31, 1901.....	278

	Page.
HH—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., May 31, 1901.....	289
II—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., April 30, 1901.....	292
JJ—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., April 30, 1901.....	292
KK—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., June 30, 1901.....	295
LL—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., June 30, 1901.....	296
MM—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., July 31, 1901.....	298
NN—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., July 31, 1901.....	298
OO—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., August 31, 1901.....	301
PP—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., August 31, 1901.....	302
Qq—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., September 30, 1901.....	304
RR—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., September 30, 1901.....	305
SS—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., October 31, 1901.....	307
TT—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., October 31, 1901.....	308
UU—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., November 30, 1901.....	310
VV—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., November 30, 1901.....	311
Testimony of Edward H. Pryor.....	317
Complainants' exhibits.....	324
Minutes of meeting of board of directors of Des Moines Union Ry. Co., March 12, 1905, and resolution respecting surplus earnings and protest of Wabash and St. Paul Companies.....	334
Protest of St. Paul and Wabash Companies offered at meeting of board of directors of Des Moines Union Ry. Co., January 18, 1907.....	336
Protest of Wabash and St. Paul Companies filed with board of directors of Des Moines Union Ry. Co. at meeting held January 3, 1908.....	336
Letter—Horace Seeley, superintendent, to D. B. Howard, auditor, Wabash Ry. Co., March 2, 1902.....	338
Defendants' Exhibit—Letter, J. Ramsey, Jr., vice-president and general manager, Wabash R. R. Co., to F. C. Huddell, president, Des Moines Union Ry. Co., August 26, 1906....	342
Testimony of Wells H. Blodgett.....	357
Complainants' exhibits.....	369
Letter—A. R. Cummins to Wells H. Blodgett, general solicitor, January 22, 1909.....	369

	Page.
Declaration of trust, F. M. Hubbell to Des Moines & St. Louis R. R. Co. et al., March 11, 1881.....	363
Defendants' exhibits.....	371
Letter—Wells H. Blodgett to W. A. Park, January 11, 1897.....	371
Letter—Wells H. Blodgett to W. A. Parks, November 23, 1895.....	373
Telegram—Wells H. Blodgett to F. M. Hubbell, March 10, 1899.....	381
Letter—Wells H. Blodgett to F. M. Hubbell, March 11, 1899.....	381
Letter—Wells H. Blodgett to F. M. Hubbell, March 20, 1899.....	382
Letter—Wells H. Blodgett to F. M. Hubbell, March 23, 1899.....	384
Stipulation of counsel respecting complainants' exhibits.....	387
List of exhibits.....	388
Plaintiffs' exhibits.....	396
Exhibit 1—Contract between Wabash, St. Louis & Pacific Ry. Co. and J. S. Polk et al., December 8, 1880.....	396
2—Contract between Wabash, St. Louis & Pacific Ry. Co. and Des Moines Northwestern Ry. Co. and Narrow Gauge Construction Co., December 8, 1880.....	400
3—Articles of incorporation of Des Moines & St. Louis R. R. Co.....	408
4—Contract between Des Moines & St. Louis Ry. Co. et al. and G. M. Dodge et al., January 2, 1882....	411
5—Proceedings had at meeting of board of directors of Des Moines Northwestern Ry. Co., December 9, 1884.....	415
5 <sup>1</sup> / <sub>2</sub> and 6—Proceedings had at first meeting of incorporators of Des Moines Union Ry. Co., December 10, 1884.....	416
Articles of incorporation of Des Moines Union Ry. Co.....	420
7—Resolution adopted at stockholders' meeting of St. Louis, Des Moines & Northern Ry. Co., January 1, 1885.....	423
8—Proceedings had at meeting of stockholders of Des Moines Northwestern Ry. Co., January 1, 1885..	424
9—Proceedings had at meeting of stockholders of Des Moines & St. Louis R. R. Co., January 1, 1885....	428
10—Proceedings had at first meeting of board of directors of Des Moines Union Ry. Co., January 1, 1885..	432
11—Proceedings had at meeting of board of directors of St. Louis, Des Moines & Northern Ry. Co., November 5, 1887.....	435
12—Proceedings had at meeting of board of directors of Des Moines & St. Louis R. R. Co., November 8, 1887.....	437

# INDEX.

vii

Page.

Exhibit 13—Notice of Des Moines & St. Louis R. R. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of certain property, November 8, 1887...	439
14—Notice of St. Louis, Des Moines & Northern Ry. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of certain property, November 8, 1887 .....	441
15—Notice of Des Moines Northwestern Ry. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of certain property, November 8, 1887...	442
16—Ordinance of city of Des Moines granting certain right of way, etc., to Des Moines & St. Louis R. R. Co., March 22, 1881.....	443
17—Deed, James F. How, trustee, to Des Moines Union Ry. Co., November 19, 1887.....	446
18—Deed, James F. How and wife to Des Moines Union Ry. Co., December 10, 1887.....	448
19—Deed, James F. How, trustee, to Des Moines Union Ry. Co., April 28, 1888.....	451
20—Deed, G. M. Dodge and wife to Des Moines Union Ry. Co., November 7, 1887.....	453
21—Deed, St. Louis, Des Moines & Northern Ry. Co. to Des Moines Union Ry. Co., November 7, 1887.....	455
22—Deed, Des Moines & St. Louis R. R. Co. to Des Moines Union Ry. Co., February 21, 1888.....	457
23—Mortgage of Des Moines Union Ry. Co. to Central Trust Co. of New York, November 1, 1887.....	459
Form of first-mortgage bond of Des Moines Union Ry. Co., \$1,000 .....	461
Form of interest coupon.....	462
Form of trustee's certificate.....	462
Exhibit 24—Proceedings had at annual meeting of stockholders of Des Moines & Northwestern Ry. Co., January 2, 1890.....	474
25—Proceedings had at meeting of stockholders of Des Moines & St. Louis R. R. Co., January 3, 1890...	475
26—Proceedings had at stockholders' meeting of Des Moines Union Ry. Co., March 31, 1888.....	476
27—Contract between Des Moines Union Ry. Co. and Des Moines & St. Louis R. R. Co. et al., May 10, 1889 .....	479
28—Proceedings had at stockholders' meeting of Des Moines Union Ry. Co., April 8, 1890.....	488
Articles of incorporation amended.....	489
29—Proceedings had at meeting of directors of Des Moines Union Ry. Co., February 11, 1891, respecting surplus earnings.....	497
30—Proceedings had at meeting of board of directors of Des Moines Union Ry. Co., January 7, 1892, respecting surplus earnings.....	498

	Page.
Exhibit 31—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year 1888.....	499
32—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year 1889.....	502
33—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year 1890.....	502
34—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year ending January 1, 1892 .....	503
35—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year ending January 1, 1893 .....	504
36—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year ending January 1, 1894 .....	505
37—Contract of ratification between Des Moines Union Ry. Co., Wabash R. R. Co., and Des Moines Northern & Western R. R. Co., July 31, 1897.....	506
38—Mortgage, Des Moines & St. Louis R. R. Co. to Central Trust Co. of New York et al., trustees, December 1, 1881.....	509
39—Release of deed, Central Trust Co. et al., trustees, to Des Moines & St. Louis R. R. Co., November 13, 1895 .....	517
40—Release, Des Moines & St. Louis R. R. Co. to Wabash, St. Louis & Pacific Ry. Co., March 1, 1882 .....	521
41—Consent of Des Moines & St. Louis R. R. Co. to cancellation of lease to Wabash, St. Louis & Pacific Ry. Co., August 3, 1886.....	527
42—Proceedings had at stockholders' meeting of Des Moines & St. Louis R. R. Co. authorizing conveyance of railroad to Wabash R. R. Co., February 3, 1899.....	530
43—Proceedings had at meeting of directors of Des Moines & St. Louis R. R. Co. authorizing conveyance of railroad to Wabash R. R. Co., March 16, 1899 .....	531

# INDEX.

ix

	Page.
Exhibit 44—Deed, Des Moines & St. Louis R. R. Co. to Wabash R. R. Co., January 1, 1890.....	533
45—Deed, Wabash, St. Louis & Pacific Ry. Co. to James F. Joy et al. as purchasing committee, etc., April 25, 1888.....	536
46—Deed of general assessment from Wabash purchasing committee to Wabash R. R. Co., August 18, 1898 .....	543
Schedule A—List of real estate and personal property in hands of Wabash purchasing committee.....	550
Exhibit 47—Mortgage, St. Louis, Des Moines & Northern Ry. Co. to Mercantile Trust Co., trustee, August 1, 1881 .....	552
Form of first-mortgage bond of St. Louis, Des Moines & Northern Ry. Co., \$1,000.00.....	553
Form of interest coupons.....	554
Form of trustee's certificate.....	554
Exhibit 48—Bill of foreclosure of Mercantile Trust Co. against St. Louis, Des Moines & Northern Ry. Co., in U. S. circuit court, southern district of Iowa.....	563
Mortgage, St. Louis, Des Moines & Northern Ry. Co. to Mercantile Trust Co. as trustee, August 1, 1881.....	567
Exhibit 49—Decree of foreclosure in case of Mercantile Trust Co., vs. St. Louis, Des Moines & Northern Ry. Co., in U. S. circuit court, southern district of Iowa, October 15, 1889.....	578
Consent of St. Louis, Des Moines & Northern Ry. Co. to entry of decree of foreclosure.....	583
Exhibit 50—Report of sale under foreclosure decree in case of Mercantile Trust Co. vs. St. Louis, Des Moines & Northern Ry. Co., in U. S. circuit court, southern district of Iowa.....	584
Exhibit A—Affidavit of publication of notice of sale and notice .....	586
Exhibit B—Notice of sale with admission of service.....	587
Exhibit 51—Deed, George F. Henry, commissioner, to Solon Humphreys and J. T. Granger, November 22, 1889.....	589
52—Order of U. S. circuit court, southern district of Iowa, confirming sale in case of Mercantile Trust Co. vs. St. Louis, Des Moines & Northern Ry. Co., November 23, 1889.....	591
53—Articles of incorporation of Des Moines & Northern Ry. Co.....	592
54—Deed, Solon Humphreys and J. T. Granger to Des Moines & Northern Ry. Co., November 23, 1889.....	596
55—Proceedings of board of directors of St. Louis, Des Moines & Northern Ry. Co. relative to conveyance of certain property to Des Moines & Northwestern Ry. Co., January 23, 1882.....	599

	Page.
Exhibit 56—Proceedings had at meeting of board of directors of Des Moines Northwestern Ry. Co., January 23, 1882 .....	599
57—Deed, St. Louis, Des Moines & Northern Ry. Co. to Des Moines Northwestern Ry. Co., January 23, 1882 .....	600
58—Mortgage, Des Moines Northwestern Ry. Co. to Central Trust Co. of New York et al., trustees, February 28, 1881.....	605
59—Decree of foreclosure in case of Central Trust Co. et al., trustees, vs. Des Moines Northwestern Ry. Co. et al., in U. S. circuit court, southern district of Iowa, November 11, 1887.....	606
60—Order of U. S. circuit court, district of Iowa, approving commissioner's report of sale and deed in case of Central Trust Co. et al. vs. Des Moines Northwestern Ry. Co. et al., June 2, 1888.....	613
Deed, George F. Henry, commissioner, to Polk & Hubbell, May 19, 1888.....	613
Exhibit 61—Articles of incorporation of Des Moines and Northwestern Ry. Co.....	615
62—Deed, Polk & Hubbell to Des Moines & Northwestern Ry. Co., December 21, 1887.....	619
63—Proceedings had at stockholders' meeting of Des Moines & Northwestern Ry. Co., August 17, 1891.....	621
64—Articles of consolidation and incorporation of Des Moines Northern & Western Ry. Co.....	624
65—Mortgage, Des Moines Northern & Western Ry. Co. to Metropolitan Trust Co. of New York, December 15, 1891.....	625
Form of first mortgage bond, \$1,000.00.....	625
Form of interest coupon.....	626
Form of trustee's certificate.....	626
Exhibit 66—Decree of foreclosure in case of Metropolitan Trust Co., trustee, vs. Des Moines Northern & Western Ry. Co., November 7, 1894.....	645
67—Report of sale in case of Metropolitan Trust Co., trustee, vs. Des Moines Northern & Western Ry. Co. ....	651
68—Order confirming report of sale under foreclosure decree in the case of Metropolitan Trust Co., trustee, vs. Des Moines Northern & Western Ry. Co., February 7, 1895.....	653
69—Commissioner's deed to G. M. Dodge et al., purchasing committee, February 8, 1895.....	654
70—Articles of incorporation of Des Moines Northern & Western R. R. Co.....	657
71—Deed, G. M. Dodge et al., purchasing committee, to Des Moines Northern & Western R. R. Co., February 25, 1895.....	663



# INDEX.

xi

Page.

Exhibit 72—Proceedings had at stockholders' meeting of Des Moines Northern & Western R. R. Co., January 5, 1899 .....	695
73—Proceedings had at special meeting of board of directors of Des Moines Northern & Western R. R. Co., April 24, 1899.....	667
74—Deed, Des Moines Northern & Western R. R. Co. to Chicago, Milwaukee & St. Paul Ry. Co., May 1, 1899 .....	673
75—Proceedings had at stockholders' meeting of Des Moines Northern & Western R. R. Co., June 12, 1907 .....	678
76—Quitclaim deed, Des Moines Northern & Western R. R. Co. to Chicago, Milwaukee & St. Paul Ry. Co., June 19, 1907.....	680
77—Deed, F. M. Hubbell and wife to F. M. Hubbell et al., trustees of Hubbell estate, December 31, 1903 .....	681
Schedule A—Real property; not to be sold.....	689
Schedule B—Real property; which may be sold.....	700
Schedule C—Personal property.....	706
Exhibit 78—Deed, Mercantile Trust Co. of New York, trustee, to James F. Joy et al., trustees, October 16, 1886..	706
Exhibit 79—Statement of stock certificates issued by Des Moines Union Ry. Co.....	711
Stipulation respecting use of terminal property by Des Moines Northwestern Ry. Co., St. Louis, Des Moines & Northern Ry. Co., and Des Moines & St. Louis R. R. Co.; also respecting capital stock of Des Moines Northern & Western R. R. Co., and as to report of St. Louis, Des Moines & Northern Ry. Co., of the year ending June 30, 1887 .....	713
Stipulation respecting annual reports of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation, etc.....	719
Further testimony for complainants.....	725
Amended and substituted articles of incorporation of Des Moines Northwestern Ry. Co.....	725
Admission that Des Moines Northwestern Ry. Co. owned and was operating a narrow-gauge railroad, December 23, 1880..	729
Articles of incorporation of St. Louis, Des Moines & Northern Ry. Co.....	729
Testimony from transcript of evidence in case of Chicago, M. & St. P. Ry. Co. vs. Des Moines Union Ry. Co., in district court of Polk County, Iowa.....	732
Testimony of Charles F. Loeth.....	732
A. H. Loudermilk.....	742
M. A. Hills.....	756
C. W. Gooch.....	769
E. W. Raymond.....	774

	Page.
Testimony of G. C. Wise.....	780
James Saguin.....	783
Ed Meilin.....	786
Stipulation of counsel as to interposition of objections to testimony of Charles Loeth et al.....	788
Stipulation of facts.....	788
Notice of election in Des Moines township, Boone County, Iowa, upon question of levying tax for purpose of aiding the St. Louis, Des Moines & Northern Ry. Co. in constructing its rail- way, etc.....	789
Certificate of township trustees to auditor of Boone County, Iowa, as to result of election, etc.....	792
Memorandum of special election in Worth township, Boone County, Iowa, upon question of levy of tax in aid of railway construction, etc.....	795
Memorandum of special election in Douglas township, Boone County, Iowa, upon question of levy of tax in aid of railway construction, etc.....	795
Acceptances by St. Louis, Des Moines & Northern Ry. Co. of taxes voted in Des Moines, Worth and Douglas townships, Boone County, Iowa, etc.....	796
Memorandum of taxes levied in aid of construction of railway..	797
Notice of election in Jefferson township, Greene County, Iowa, upon question of levy of tax in aid of railway construction..	798
Certificate to auditor of Greene County, Iowa, as to result of election in Jefferson township, etc.....	800
Notice of election in Franklin township, Greene County, Iowa, upon question of levy of tax in aid of railway construction..	802
Certificate to auditor of Greene County, Iowa, as to result of election in Franklin township, etc.....	804
Notice of election in Highland township, Greene County, Iowa, upon question of levy of tax in aid of railway construction..	806
Certificate to auditor of Greene County, Iowa, as to result of election in Highland township, etc.....	808
Notice of election in Grant township, Greene County, Iowa, upon question of levy of tax in aid of railway construction.....	809
Certificate to auditor of Greene County, Iowa, as to result of election in Grant township, etc.....	811
Notice of election in Logan township, Calhoun County, Iowa, upon question of levy of tax in aid of railway construction..	814
Certificate to auditor of Calhoun County, Iowa, as to result of election in Logan township, etc.....	816
Memorandum as to holding of special election in Twin Lakes, Williams, Butler, and Garfield townships, in Calhoun County, Iowa, upon question of levy of tax to aid in railway construc- tion, etc.....	818
Stipulation as to taking of deposition of E. C. Kinney.....	820
Further testimony for complainants.....	821
Deposition of Edward C. Kinney.....	821
Certificate of notary to deposition.....	826
Vouchers of Narrow Gauge Ry. Construction Co.....	829

# INDEX.

xiii

Page.

Exhibit 80—Contract between F. M. Hubbell et al. and Chicago, Milwaukee & St. Paul Ry. Co., March 15, 1894.....	838
Stipulation for taking of testimony of Mark L. Mitchell et al.....	847
Further testimony for complainants.....	876
Testimony of Mark L. Mitchell.....	876
William H. Moorehead.....	878
W. L. Finneum.....	883
Commissioner's certificate of testimony of Mark L. Mitchell et al.....	887
Articles of incorporation of Des Moines Terminal Co.....	887
Admission of respondents as to letter of James F. How to George S. Grover, March 25, 1881.....	894
Complainants' Exhibit 94—Letter, James F. How to George S. Grover, March 25, 1881.....	894
Testimony for defendants.....	897
Stipulation as to reports of Wabash R. R. Co. and Chicago, Milwaukee & St. Paul Ry. Co., to Interstate Commerce Commission, filed October 19, 1912.....	901
Stipulation respecting annual reports of Des Moines Northwestern Ry. Co. et al. to executive council of State of Iowa for purpose of assessment of property for taxation, etc.....	915
Deposition of T. J. Tobin.....	922
Exhibit A—Ledger account of Wabash, St. Louis & Pacific Ry. Co. with Des Moines & St. Louis R. R. Co.....	925
B—Ledger account of Wabash, St. Louis & Pacific Ry. Co. with Des Moines & Northwestern Ry. Co. ....	930
C—Statement of expenditures by Wabash, St. Louis & Pacific Ry. Co., May, 1882.....	938
D—Statement, Wabash, St. Louis & Pacific Ry. Co. to G. M. Dodge.....	940
E—Communication addressed to Jas. F. How, May 31, 1882.....	941
F—Statement of cost of St. Louis, Des Moines & Northern Ry. from Clive to Waukeee.....	941
G—Statement of cost of St. Louis, Des Moines & Northern Ry. from Des Moines to Clive.....	951
H—Statement of expenditures by G. M. Dodge on account of building and tracks, etc., in Des Moines .....	962
I—Journal voucher of Wabash, St. Louis & Pacific Ry. Co., October, 1884.....	972
Letter—G. M. Dodge to James F. How, November 20, 1884 .....	976
Letter—James F. How to G. M. Dodge, November 17, 1884 .....	977
Exhibit J—Statement of property in Des Moines, Iowa, etc.....	981
Exhibit K—Journal voucher, accounting department, Wabash R. R. Co., October, 1904.....	988
Certificate of notary to deposition of T. J. Tobin.....	996
Deposition of Frederick M. Hubbell.....	997
Letter to S. T. Russell, of New York stock exchange.....	1062

	Page.
Statement of receipts and expenditures and general balance sheet of Des Moines Union Ry. Co., .....	1065
Letter—F. M. Hubbell to O. D. Ashley, president, June 12, 1888.....	1069
Letter—O. D. Ashley to F. M. Hubbell, June 16, 1888,....	1070
Letter—F. M. Hubbell to O. D. Ashley, June 18, 1888,.....	1080
Letter—F. M. Hubbell to O. D. Ashley, secretary, February 5, 1890,.....	1090
Letter—F. M. Hubbell to O. D. Ashley, president, April 1, 1890.....	1091
Letter—F. M. Hubbell to O. D. Ashley, president, August 19, 1890,.....	1091
Letter—F. M. Hubbell to J. C. Ottosen, secretary, October 9, 1896.....	1093
Letter—F. M. Hubbell to O. D. Ashley, president, April 1, 1890,.....	1074
Deed—Des Moines & St. Louis R. R. Co. to Des Moines Union Ry. Co., February 21, 1888,.....	1112
Proxy—James F. How to J. S. Polk, October 27, 1887,.....	1154
Proxy—Purchasing committee to Charles M. Hays,.....	1155
Proxy—James F. Joy et al. to Charles M. Hays, January 19, 1894,.....	1156
Proxy—James F. Joy et al. to Charles M. Hays, January 25, 1895,.....	1156
Proxy of O. D. Ashley et al., December 1, 1897,.....	1157
Letter—F. M. Hubbell, treasurer, to G. M. Dodge, August 24, 1882.....	1158
Stipulation, filed October 23, 1912, as to addition to deposition of F. M. Hubbell,.....	1165
Testimony of C. Huttenlocher,.....	1169
Copy of G. M. Dodge account from ledger of Polk & Hubbell,.....	1173
Statement of real estate paid for by Dodge to Construction Company in City of Des Moines,.....	1179
Testimony of F. C. Hubbell,.....	1182
Testimony of A. B. Cummins,.....	1203
Letter—A. B. Cummins to Wells H. Biedgett, general solicitor, January 22, 1890,.....	1210
Letter—A. B. Cummins to G. M. Dodge, January 27, 1890,.,	1211
Minutes of meeting of directors of Des Moines & St. Louis R. R. Co., April 8, 1890,.....	1218
Letter—A. B. Cummins to F. C. Hubbell, president, March 13, 1897,.....	1221
Letter—A. B. Cummins to F. C. Hubbell, president, February 24, 1897,.....	1222
Deposition of Joseph Ramsey, Jr.,.....	1262
Stipulation of counsel respecting the admission of copies of certain documentary evidence on the part of defendants and as to certain facts.....	1269
Exhibit A—List of exhibits referred to in stipulation,.....	1270
Defendants' exhibits,.....	1296

# INDEX.

xv

Page.

Exhibit 100—List of offices held by F. M. Hubbell.....	1296
101—Record of stockholders' meeting of Des Moines Union Ry. Co., November 1, 1887.....	1297
102—Record of directors' meeting of Des Moines Union Ry. Co., November 8, 1887.....	1299
103—Record of directors' meeting of Des Moines Union Ry. Co., March 31, 1888.....	1301
104—Record of meeting of executive committee of Des Moines Union Ry. Co., April 26, 1888.....	1302
105—Record of special meeting of directors of Des Moines Union Ry. Co., September 10, 1888.....	1302
106—Record of stockholders' meeting of Des Moines Union Ry. Co., January 8, 1889.....	1304
107—Record of stockholders' meeting of Des Moines Union Ry. Co., January 3, 1890.....	1305
108—Record of directors' meeting of Des Moines Union Ry. Co., January 3, 1890.....	1308
109—Record of stockholders' meeting of Des Moines Union Ry. Co., February 18, 1890.....	1310
110—Record of directors' meeting of Des Moines Union Ry. Co., April 8, 1890.....	1311
110a—Power of attorney, Chas. M. Hays to A. B. Cummins, June 23, 1890.....	1313
111—Record of directors' meeting of Des Moines Union Ry. Co., June 24, 1890.....	1314
112—Record of directors' meeting of Des Moines Union Ry. Co., September 10, 1890.....	1315
113—Record of meeting of executive committee of Des Moines Union Ry. Co., October 25, 1890.....	1316
114—Record of meeting of executive committee of Des Moines Union Ry. Co., November 21, 1890.....	1318
115—Record of stockholders' meeting of Des Moines Union Ry. Co., February 11, 1891.....	1318
116—Portion of record of directors' meeting of Des Moines Union Ry. Co., February 11, 1891.....	1320
117—Record of directors' meeting of Des Moines Union Ry. Co., February 12, 1891.....	1321
118—Record of directors' meeting of Des Moines Union Ry. Co., June 6, 1891.....	1322
119—Record of stockholders' meeting of Des Moines Union Ry. Co., January 7, 1892.....	1323
120—Record of meeting of executive committee of Des Moines Ry. Co., January 7, 1892.....	1324
121—Record of directors' meeting of Des Moines Union Ry. Co., August 2, 1892.....	1325
122—Record of adjourned meeting of directors of Des Moines Union Ry. Co., November 4, 1892.....	1327
123—Record of stockholders' meeting of Des Moines Union Ry. Co., January 6, 1893.....	1328

	Page
Exhibit 124—Record of directors' meeting of Des Moines Union Ry. Co., January 6, 1893.....	1329
125—Record of directors' meeting of Des Moines Union Ry. Co., February 8, 1893.....	1331
126—Record of adjourned meeting of directors of Des Moines Union Ry. Co., April 18, 1893.....	1332
127—Record of adjourned meeting of directors of Des Moines Union Ry. Co., October 4, 1893.....	1333
128—Record of adjourned meeting of stockholders of Des Moines Union Ry. Co., January 25, 1894...	1333
129—Record of directors' meeting of Des Moines Union Ry. Co., January 25, 1894.....	1335
130—Record of directors' meeting of Des Moines Union Ry. Co., May 26, 1894.....	1338
131—Record of adjourned meeting of directors of Des Moines Union Ry. Co., May 30, 1894.....	1340
132—Record of adjourned meeting of directors of Des Moines Union Ry. Co., June 7, 1894.....	1340
133—Record of directors' meeting of Des Moines Union Ry. Co., July 10, 1894.....	1341
134—Record of directors' meeting of Des Moines Union Ry. Co., August 14, 1894.....	1342
135—Record of adjourned meeting of directors of Des Moines Union Ry. Co., November 14, 1894.....	1343
136—Record of adjourned meeting of directors of Des Moines Union Ry. Co., November 19, 1894.....	1344
137—Record of adjourned meeting of Directors of Des Moines Union Ry. Co., November 30, 1894.....	1346
138—Record of adjourned meeting of stockholders of Des Moines Union Ry. Co., February 14, 1895...	1347
139—Record of directors' meeting of Des Moines Union Ry. Co., February 14, 1895.....	1348
140—Record of stockholders' meeting of Des Moines Union Ry. Co., January 2, 1896.....	1349
141—Record of directors' meeting of Des Moines Union Ry. Co., January 2, 1896.....	1350
142—Record of directors' meeting of Des Moines Union Ry. Co., November 11, 1896.....	1353
143—Record of stockholders' meeting of Des Moines Union Ry. Co., March 10, 1897.....	1355
144—Record of directors' meeting of Des Moines Union Ry. Co., March 10, 1897.....	1356
145—Record of directors' meeting of Des Moines Union Ry. Co., July 21, 1897.....	1357
146—Record of special meeting of directors of Des Moines Union Ry. Co., November 10, 1897.....	1358
147—Record of stockholders' meeting of Des Moines Union Ry. Co., January 6, 1898.....	1359
148—Record of adjourned meeting of directors of Des Moines Union Ry. Co., January 29, 1898.....	1360

# INDEX.

xvii

Page.

<b>Exhibit 149</b> —Record of adjourned meeting of directors of Des Moines Union Ry. Co., March 24, 1898.....	1363
150—Record of meeting of executive committee of Des Moines Union Ry. Co., July 28, 1898.....	1365
151—Record of meeting of executive committee of Des Moines Union Ry. Co., July 26, 1898.....	1365
152—Record of directors' meeting of Des Moines Union Ry. Co., February 14, 1899.....	1366
153—Record of directors' meeting of Des Moines Union Ry. Co., March 14, 1899.....	1367
154—Record of special meeting of stockholders of Des Moines Union Ry. Co., October 3, 1899.....	1368
155—Record of directors' meeting of Des Moines Union Ry. Co., October 3, 1899.....	1368
156—Record of stockholders' meeting of Des Moines Union Ry. Co., January 4, 1900.....	1370
157—Record of adjourned meeting of directors of Des Moines Union Ry. Co., January 30, 1900.....	1372
158—Record of directors' meeting of Des Moines Union Ry. Co., June 12, 1900.....	1374
159—Record of adjourned meeting of directors of Des Moines Union Ry. Co., February 14, 1901.....	1374
160—Record of adjourned meeting of directors of Des Moines Union Ry. Co., March 31, 1902.....	1376
161—Record of special meeting of stockholders of Des Moines Union Ry. Co., August 22, 1902.....	1377
162—Record of adjourned meeting of directors of Des Moines Union Ry. Co., September 26, 1902.....	1378
162a—Power of attorney, A. J. Earling, H. B. Williams, and J. Ramsay, Jr., to J. A. Wagner, January 7, 1903 .....	1380
163—Record of adjourned meeting of directors of Des Moines Union Ry. Co., March 17, 1903.....	1380
164—Record of stockholders' meeting of Des Moines Union Ry. Co., January 5, 1905.....	1383
Reports of superintendent for the years 1900 to 1905, inclusive .....	1384
<b>Exhibit 165</b> —Record of directors' meeting of Des Moines Union Ry. Co., January 5, 1906.....	1389
166—Record of adjourned meeting of directors of Des Moines Union Ry. Co., December 13, 1906.....	1390
167—Record of stockholders' meeting of Des Moines Union Ry. Co., January 19, 1907.....	1392
168—Record of directors' meeting of Des Moines Union Ry. Co., January 18, 1907.....	1393
Letter, J. A. Wagner to F. C. Hubbell, president, January 3, 1907.....	1396
Report of superintendent for the year 1906.....	1397
<b>Exhibit 169</b> —Record of stockholders' meeting of Des Moines Union R. R. Co., January 3, 1908.....	1402

	Page.
Exhibit 170—Record of directors' meeting of Des Moines Union Ry. Co., January 3, 1908.....	1404
Report of superintendent for the year 1907.....	1405
Exhibit 171—Record of adjourned meeting of stockholders of Des Moines Union Ry. Co., January 9, 1909....	1406
172—Record of directors' meeting of Des Moines Union Ry. Co., January 8, 1909.....	1410
Report of superintendent for the year 1908.....	1411
Exhibit 172a—Stub, certificate for stock in Des Moines Union Ry. Co. issued to purchasing committee, and certificate .....	1412
172b—Stub and certificate of stock issued to purchasing committee .....	1415
172c—Stub and certificate of stock issued to Continental Trust Company.....	1416
173—Record of directors' meeting of Des Moines & St. Louis R. R. Co., March 23, 1881.....	1418
174—Record of directors' meeting of Des Moines & St. Louis R. R. Co., May 10, 1881.....	1419
175—Record of directors' meeting of Des Moines & St. Louis R. R. Co., January 25, 1882.....	1422
176—Record of directors' meeting of Des Moines & St. Louis R. R. Co., April 11, 1882.....	1424
177—Record of directors' meeting of Des Moines & St. Louis R. R. Co., April 13, 1882.....	1426
178—Record of stockholders' meeting of Des Moines & St. Louis R. R. Co., January 6, 1883.....	1427
179—Record of directors' meeting of Des Moines & St. Louis R. R. Co., January 9, 1883.....	1428
180—Record of directors' meeting of Des Moines & St. Louis R. R. Co., January 3, 1884.....	1428
181—Record of stockholders' meeting of Des Moines & St. Louis R. R. Co., January 2, 1884.....	1429
182—Record of stockholders' meeting of Des Moines & St. Louis R. R. Co., January 6, 1887.....	1430
183—Record of directors' meeting of Des Moines & St. Louis R. R. Co., May 25, 1889.....	1432
184—Record of directors' meeting of Des Moines & St. Louis R. R. Co., January 2, 1890.....	1433
185—Record of directors' meeting of Des Moines & St. Louis R. R. Co., April 9, 1890.....	1434
186—Record of stockholders' meeting of Des Moines & St. Louis R. R. Co., February 11, 1891.....	1436
187—Record of directors' meeting of Des Moines & St. Louis R. R. Co., February 11, 1891.....	1437
188—Record of directors' meeting of Des Moines & St. Louis R. R. Co., January 15, 1897.....	1438
189—Record of special meeting of stockholders of Des Moines & St. Louis R. R. Co., January 25, 1897..	1441



<b>Exhibit 100—Record of directors' meeting of Des Moines &amp; St. Louis R. R. Co., February 8, 1897.....</b>	<b>1443</b>
191—Record of stockholders' meeting of Des Moines & St. Louis R. R. Co., February 3, 1899.....	1444
192—Record of special meeting of directors of Des Moines & St. Louis R. R. Co., March 16, 1899..	1445
193—Deed, Des Moines & St. Louis R. R. Co. to Wabash R. R. Co., January 1, 1899.....	1449
194—Record of directors' meeting of Des Moines Northwestern Ry. Co., January 23, 1897.....	1450
195—Record of directors' meeting of Des Moines Northwestern Ry. Co., December 9, 1894.....	1453
196—Record of directors' meeting of Des Moines Northwestern Ry. Co., May 18, 1899.....	1454
197—Record of stockholders' meeting of Des Moines & Northwestern Ry. Co., January 2, 1899.....	1455
198—Record of directors' meeting of Des Moines & Northwestern Ry. Co., October 23, 1899.....	1455
199—Record of stockholders' meeting of Des Moines & Northwestern Ry. Co., October 12, 1899.....	1456
Resolution adopted for consolidation of Des Moines & Northwestern Ry. Co. and Des Moines & Northern Ry. Co. ....	1457
<b>Exhibit 200—Record of directors' meeting of Des Moines &amp; Northwestern Ry. Co., December 9, 1899.....</b>	<b>1471</b>
201—Record of directors' meeting of St. Louis, Des Moines & Northern Ry. Co., January 23, 1897....	1472
202—Resolution adopted at stockholders' meeting of St. Louis, Des Moines & Northern Ry. Co., January 1, 1895.....	1473
203—Resolution adopted at directors' meeting of St. Louis, Des Moines & Northern Ry. Co., January 1, 1895.....	1474
204—Record of stockholders' meeting of St. Louis, Des Moines & Northern Ry. Co., January 7, 1896....	1475
205—Record of stockholders' meeting of St. Louis, Des Moines & Northern Ry. Co., January 6, 1897....	1475
206—Record of directors' meeting of St. Louis, Des Moines & Northwestern Ry. Co., January 3, 1899 .....	1475
207—Record of stockholders' meeting of St. Louis, Des Moines & Northern Ry. Co., January 2, 1899....	1476
208—Record of stockholders' meeting of Des Moines Northern & Western Ry. Co., December 14, 1899.	1476
209—Record of adjourned meeting of directors of Des Moines Northern & Western Ry. Co., October 4, 1897 .....	1480
210—Record of adjourned meeting of stockholders of Des Moines Northern & Western Ry. Co., January 9, 1894.....	1481

	Page.
Exhibit 211—Record of adjourned meeting of directors of Des Moines Northern & Western Ry. Co., January 29, 1894 .....	1482
212—Record of adjourned meeting of directors of Des Moines Northern & Western Ry. Co., July 26, 1894 .....	1483
213—Record of adjourned meeting of directors of Des Moines Northern & Western Ry. Co., October 3, 1894 .....	1485
214—Record of stockholders' meeting of Des Moines Northern & Western Ry. Co., January 3, 1895....	1486
215—Record of directors' meeting of Des Moines Northern & Western Ry. Co., March 5, 1895.....	1487
216—Record of special meeting of stockholders of Des Moines Northern & Western Ry. Co., March 5, 1895 .....	1492
217—Record of directors' meeting of Des Moines Northern & Western Ry. Co., December 8, 1896.....	1499
218—Record of directors' meeting of Des Moines Northern & Western Ry. Co., September 7, 1897.....	1497
219—Record of stockholders' meeting of Des Moines Northern & Western R. R. Co., January 5, 1899..	1498
220—Record of special meeting of directors of Des Moines Northern & Western R. R. Co., April 24, 1899 .....	1499
221—Record of special meeting of directors of Des Moines Northern & Western Ry. Co., May 5, 1899 .....	1505
222—Record of special meeting of stockholders of Des Moines Northern & Western Ry. Co., May 8, 1899.	1508
223—Record of special meeting of directors of Des Moines Northern & Western Ry. Co., May 27, 1899 .....	1517
224—Extracts from records of stockholders' meeting of Chicago, Milwaukee & St. Paul Ry. Co. relating to Des Moines Northern & Western R. R. Co....	1519
225—Extracts from records of directors' meeting of Chicago, Milwaukee & St. Paul Ry. Co. relating to Des Moines Northern & Western R. R. Co....	1521
226—Record of adjourned meeting of directors of Wabash, St. Louis & Pacific Ry. Co., March 23, 1881 .....	1528
227—Record of meeting of executive committee of Wabash, St. Louis & Pacific Ry. Co., December 26, 1882.....	1529
228—Extract from records of directors' meeting of Wabash Western Ry. Co., March 14, 1887.....	1530
229—Extract from report of Charles M. Hays, general manager of Wabash Western Ry. Co., February 25, 1888.....	1532

Exhibit 230—Record of meeting of executive committee of the Wabash R. R. Co., December 17, 1889.....	1532
231—Record of directors' meeting of the Wabash R. R. Co., February 18, 1890.....	1532
232—Record of directors' meeting of the Wabash R. R. Co., March 3, 1890.....	1533
233—Record of directors' meeting of the Wabash R. R. Co., June 2, 1890.....	1535
234—Record of directors' meeting of the Wabash R. R. Co., October 22, 1895.....	1536
235—Record of directors' meeting of the Wabash R. R. Co., March 7, 1899.....	1537
236—Record of stockholders' meeting of the Wabash R. R. Co., October 10, 1899.....	1538
237—Record of directors' meeting of the Wabash R. R. Co., October 5, 1897.....	1540
238—Record of directors' meeting of the Wabash R. R. Co., August 16, 1898.....	1540
Final report of Wabash purchasing committee.....	1540
Exhibit 239—Record of directors' meeting of the Wabash R. R. Co., April 4, 1899.....	1553
240—Record of adjourned meeting of purchasing com- mittee of Wabash, St. Louis & Pacific Ry. Co., August 6, 1886.....	1555
241—Record of meeting of purchasing committee of Wabash, St. Louis & Pacific Ry. Co., September 27, 1887.....	1556
242—Record of meeting of purchasing committee, De- cember 22, 1887.....	1557
243—Record of meeting of purchasing committee of Wabash, St. Louis & Pacific Ry. Co., May 30, 1888.....	1557
244—Record of meeting of purchasing committee of Wabash, St. Louis & Pacific Ry. Co., February 18, 1890.....	1558
245—Record of meeting of purchasing committee of Wabash, St. Louis & Pacific Ry. Co., July 16, 1890.....	1560
246—Record of meeting of purchasing committee of Wabash, St. Louis & Pacific Ry. Co., March 29, 1897.....	1560
247—Record of meeting of purchasing committee of Wabash, St. Louis & Pacific Ry. Co., October 29, 1897.....	1561
248—Record of meeting of purchasing committee of Wabash, St. Louis & Pacific Ry. Co., March 1, 1898.....	1561
249—Memorandum, 1899, as to purchasing committee of Wabash, St. Louis & Pacific Ry. Co.....	1562

	Page
Exhibit 250—Contract between Narrow Gauge Railway Construction Co. and Wabash, St. Louis & Pacific Ry. Co., December 8, 1880.....	1562
251—Letter, W. F. Merrill, general superintendent, to F. M. Hubbell, February 28, 1881.....	1563
252—Letter, James F. How, 2d vice-president, to Polk & Hubbell, July 18, 1881.....	1562
253—Letter, James F. How, 3d vice president, to F. M. Hubbell, May 26, 1882.....	1562
254—Letter, G. M. Dodge to F. M. Hubbell, president, June 3, 1882.....	1560
255—Letter, D. B. Howard, auditor, to Jas. F. How, 3d vice-president.....	1567
256—Letter, F. M. Hubbell, president, to G. M. Dodge, June 10, 1882.....	1568
257—Letter, James F. How, secretary, to J. S. Polk, May 29, 1883.....	1567
258—Letter, James F. How, secretary, to Polk & Hubbell, September 20, 1883.....	1570
259—Letter, James F. How, secretary, to Polk & Hubbell, September 27, 1883.....	1571
260—Letter, James F. How, general agent, to Polk & Hubbell, August 4, 1884.....	1572
261—Letter, James F. How, general agent, to Polk & Hubbell, August 8, 1884.....	1572
262—Letter, G. M. Dodge to Polk & Hubbell, September 9, 1884.....	1573
263—Proposition of Polk & Hubbell to purchasing committee of Wabash, St. Louis & Pacific Ry. Co., October 9, 1886, and acceptance.....	1573
264—Resolution of board of directors of Wabash Company approving proposition and acceptance, Exhibit 263.....	1573
265—Contract between Polk & Hubbell and James F. Joy et al., purchasing committee, September 10, 1887.....	1577
266—Memorandum as to transfer, etc., of Des Moines Northwestern Railway to Polk & Hubbell, September 17, 1887.....	1577
267—Contract between Central Trust Company of New York and James F. Joy et al. as to Des Moines Northwestern Ry. Co., May 29, 1888.....	1577
268—Receipt, Wager Swayne to J. F. Joy et al., purchasing committee, for \$112,000.00 of Des Moines Union Depot Company first-mortgage bonds, May 29, 1888.....	1577
269—Contract between J. F. Joy et al., purchasing committee, and Des Moines & Northwestern Ry. Co., May 15, 1889.....	1577

# INDEX.

xxiii

	Page.
Exhibit 270—Letter, O. D. Ashley, secretary purchasing committee, to F. M. Hubbell, February 11, 1890....	1580
271—Contract as to proposition by F. M. Hubbell of Des Moines & Northwestern bonds.....	1581
272—Receipt of Central Trust Company to Wabash purchasing committee for certain bonds, March 7, 1890 .....	1584
273—Letter, James F. How, vice-president, to Polk & Hubbell, November 19, 1887.....	1585
274—Letter, Polk & Hubbell to Jas. F. How, November 28, 1887.....	1585
275—Letter, G. M. Dodge to Polk & Hubbell, December 5, 1887.....	1586
276—Letter, James F. How, vice-president, to J. S. Polk, January 31, 1888.....	1587
277—Letter, J. S. Polk to James F. How, February 1, 1888 .....	1587
278—Letter, James F. How, vice-president, to J. S. Polk, February 13, 1888.....	1588
279—Letter, Wells H. Blodgett to F. M. Hubbell, February 20, 1888.....	1589
280—Letter, J. S. Polk to James F. How, February 21, 1888.....	1589
281—Statement, property in Des Moines, Iowa.....	1590
282—Letter, G. M. Dodge, president, to F. M. Hubbell, April 14, 1888.....	1591
283—Letter, James F. How, vice-president, to Polk & Hubbell, April 28, 1888.....	1591
284—Letter, James F. How, vice president, to F. M. Hubbell, April 28, 1888.....	1592
285—Letter, James F. How, vice-president, to F. M. Hubbell, secretary, June 1, 1888.....	1592
286—Receipt, Wells H. Blodgett to Des Moines Union Ry. Co., for bond, \$1,000.00, June 1, 1888.....	1593
287—Letter, James F. How to F. M. Hubbell, June 28, 1888 .....	1593
288—Letter, James F. How, vice-president, to Polk & Hubbell, September 17, 1888.....	1594
289—Letter, G. M. Dodge, president, to J. B. Van Dyne, superintendent, 11. 8, 1888.....	1594
290—Letter, James F. How, vice-president, to F. M. Hubbell, March 5, 1889.....	1595
291—Letter, W. S. Lincoln, chief engineer, to F. M. Hubbell, March 18, 1889.....	1595
292—Letter, James F. How, vice-president, to F. M. Hubbell, April 1, 1889.....	1596
293—Letter, James F. How, vice-president, to F. M. Hubbell, secretary, May 25, 1889.....	1596
294—Letter, James F. How, vice-president, to Polk & Hubbell, June 28, 1889.....	1597

	Page.
Exhibit 235—Letter, A. B. Cummins to Wells H. Blodgett, general solicitor, January 22, 1890.....	1598
236—Letter, A. B. Cummins to Gen. G. M. Dodge, January 27, 1890.....	1598
237—Option of purchasing committee to F. M. Hubbell for purchase of bonds of Des Moines Union Ry. Co. and acceptance, etc., February 5, 1890.....	1599
238—Draft of contract of February 11, 1890, for the purchase of Des Moines Union stock and bonds by F. M. Hubbell.....	1600
239—Agreement and sale of bonds and stock of Des Moines Union Ry. Co. to F. M. Hubbell, February 11, 1890.....	1601
240—Memorandum of agreement between purchasing committee of Wabash, St. Louis & Pacific Ry. Co. and F. M. Hubbell, February 11, 1890.....	1601
241—Letter, G. M. Dodge to F. M. Hubbell, February 18, 1890.....	1602
241a—Letter, O. D. Ashley, president, to F. M. Hubbell, April 5, 1890.....	1602
242—Draft of record for meeting of directors of Des Moines & St. Louis Railroad Company, April 8, 1890.....	1603
243—Amendments to articles of incorporation of the Des Moines Union Railway Co.....	1604
243a—Letter, James F. How, vice-president, to F. M. Hubbell, secretary, April 17, 1890.....	1610
243b—Letter, James F. How, vice-president, to F. M. Hubbell, St. Louis, Mo., April 28, 1890.....	1611
243c—Letter, James F. How, vice-president, to F. M. Hubbell, May 10, 1890.....	1612
244—Letter, James F. How, vice-president, to F. M. Hubbell, May 20, 1890.....	1612
245—Agreement between F. M. Hubbell and purchasing committee for sale to Mr. Hubbell of 50 bonds of Des Moines Union Ry. Co. and 500 shares of its stock, dated June 5, 1890.....	1613
245a—Letter, G. M. Dodge to F. M. Hubbell, June 6, 1890.....	1614
245b—Letter, O. D. Ashley, president, to F. M. Hubbell, June 7, 1890.....	1614
245c—Letter, O. D. Ashley to F. M. Hubbell, October 5, 1891.....	1614
245d—Telegram, James F. How to F. M. Hubbell, secretary, November 27, 1891.....	1615
245e—Letter, James F. How, vice-president, to F. M. Hubbell, secretary, November 30, 1891.....	1615
246—Letter, Chas. M. Hays, general manager, to F. M. Hubbell, president, April 28, 1892.....	1616

# INDEX.

XXV

	Page.
Exhibit 307—Letter, Chas. M. Hays, general manager, to F. M. Hubbell, secretary and treasurer, April 22, 1893.	1616
308—Letter, F. M. Hubbell, president, to Roswell Miller, president, February 22, 1894.	1617
309—Contract between Des Moines Northern & Western Ry. Co. and Chicago, Milwaukee & St. Paul Ry. Co., March 15, 1894.	1618
310—Letter, F. C. Hubbell, president, to F. L. O'Leary, treasurer, June 11, 1894.	1623
311—Letter, F. C. Hubbell, vice-president, to C. M. Hays, general manager, June 11, 1894.	1623
312—Letter, F. C. Hubbell, president, to Chas. M. Hays, vice-president, October 17, 1894.	1623
313—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, October 22, 1894.	1624
314—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, November 7, 1894.	1625
315—Letter, F. C. Hubbell, president, to Chas. M. Hays, vice-president, November 8, 1894.	1626
316—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, November 10, 1894.	1627
317—Letter, F. M. Hubbell, president, to Roswell Miller, president, November 20, 1894.	1628
318—Letter, Roswell Miller, president, to F. M. Hubbell, president, November 24, 1894.	1628
319—Letter, Roswell Miller, president, to F. M. Hubbell, president, November 26, 1894.	1630
320—Letter, Roswell Miller, president, to F. M. Hubbell, president, November 31, 1894.	1630
321—Letter, Frank S. Bond, vice-president, to Roswell Miller, president, November 19, 1894.	1631
322—Letter, F. M. Hubbell, president, to Roswell Miller, president, November 22, 1894.	1632
322a—Letter, Charles M. Hays, vice-president and general manager, to F. M. Hubbell, president, February 22, 1895.	1633
322b—Letter, Charles M. Hays, vice-president and general manager, to F. M. Hubbell, secretary, February 25, 1895.	1633
323—Letter, F. M. Hubbell to Roswell Miller, president, March 1, 1895.	1634
323a—Letter, Charles M. Hays, vice-president and general manager, to F. C. Hubbell, president, April 22, 1895.	1635
324—Letter, Roswell Miller, president, to F. M. Hubbell, president, May 14, 1895.	1636

	Page.
Exhibit 325—Letter, Roswell Miller to F. M. Hubbell, May 16, 1895 .....	1636
326—Receipt, Roswell Miller to Frederick M. Hubbell et al. for certain certificates of stock in the Des Moines Northern & Western R. R. Co.....	1637
327—Letter, F. C. Hubbell, president, to Chas. M. Hays, vice-president, May 1, 1895.....	1638
328—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, May 7, 1895 .....	1639
329—Letter, F. C. Hubbell, president, to Chas. M. Hays, vice-president, May 10, 1895.....	1639
330—Telegram, Chas. M. Hays to F. C. Hubbell, 5, 13, 1895 .....	1640
331—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, May 14, 1895.....	1641
331a—Telegram, O. D. Ashley to F. M. Hubbell, May 17, 1895.....	1641
331b—Letter, O. D. Ashley, president, to F. M. Hubbell, May 17, 1895.....	1642
331c—Letter, O. D. Ashley, president, to Gen. G. M. Dodge, May 29, 1895.....	1643
331d—Letter, O. D. Ashley to F. M. Hubbell, June 4, 1895 .....	1643
332—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, July 6, 1895 .....	1644
333—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, August 1, 1895 .....	1644
334—Letter, F. C. Hubbell, president, to Chas. M. Hays, vice-president, August 20, 1895.....	1645
335—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, August 29, 1895 .....	1646
336—Letter, F. C. Hubbell, president, to Chas. M. Hays, vice-president, August 24, 1895.....	1646
337—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbell, president, August 29, 1895 .....	1647
338—Contract between Wabash Railroad Company and Des Moines Union Ry. Co., August 31, 1895....	1647
339—Letter, F. M. Hubbell to Roswell Miller, president, January 22, 1895.....	1650
340—Letter, Roswell Miller to F. M. Hubbell, president, March 6, 1895.....	1651
341—Letter, F. M. Hubbell, president, to Roswell Miller, president, May 11, 1895.....	1652



	Page.
Exhibit 342—Letter, Roswell Miller to F. M. Hubbard, president, May 13, 1895.....	1654
343—Letter, F. M. Myers, secretary, to F. M. Hubbard, president, May 18, 1895.....	1655
344—Letter, F. M. Hubbard, president, to Roswell Miller, president, May 15, 1895.....	1655
345—Letter, F. M. Hubbard et al. to Roswell Miller, president, May 17, 1895.....	1657
346—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbard, president, September 2, 1895.....	1657
347—Letter, F. C. Hubbard, president, to Chas. M. Hays, vice-president, September 2, 1895.....	1658
348—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbard, president, September 18, 1895.....	1659
348a—Letter, Chas. M. Hays, vice-president and general manager, to F. M. Hubbard, secretary, November 26, 1895.....	1659
349—Letter, Chas. M. Hays, vice-president and general manager, to F. C. Hubbard, president, September 27, 1895.....	1660
350—Letter, F. C. Hubbard, president, to Chas. M. Hays, vice-president, October 23, 1895.....	1660
350a—Letter, Charles M. Hays to F. M. Hubbard, presi- dent, December 6, 1895.....	1661
350b—Letter, J. Ramsey, Jr., general manager, to F. M. Hubbard, secretary, December 10, 1895.....	1661
350c—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbard, president, January 23, 1896.....	1661
351—Letter, P. M. Myers, secretary, to F. M. Hubbard, president, March 26, 1896.....	1662
352—Letter, F. C. Hubbard, president, to J. Ramsey, Jr., general manager, April 7, 1896.....	1662
353—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbard, president, April 8, 1896.....	1663
354—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbard, superintendent, Au- gust 21, 1896.....	1663
355—Letter, F. C. Hubbard, president, to J. Ramsey, Jr., vice-president, August 24, 1896.....	1664
356—Letter, F. C. Hubbard, president, to J. Ramsey, Jr., general manager, August 24, 1896.....	1665
357—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbard, president, August 26, 1896.....	1666
357a—Letter, J. Ramsey, Jr., vice-president and general manager, to F. M. Hubbard, secretary, October 13, 1896.....	1666

Exhibit 358—Letter, J. Ramsey, Jr., vice-president and general manager, to F. M. Hubbell, president, November 3, 1896.....	1667
359—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, November 25, 1896.....	1668
360—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbell, president, November 27, 1896.....	1668
361—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, December 1, 1896.....	1670
362—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbell, president, December 2, 1896.....	1672
362a—Letter, O. D. Ashley, president, to F. M. Hubbell, secretary, December 28, 1896.....	1673
363—Letter, F. M. Hubbell, secretary, to A. B. Cummins, December 31, 1896.....	1674
364—Letter, F. M. Hubbell, secretary, to O. D. Ashley, president, December 31, 1896.....	1675
365—Letter, F. M. Hubbell, secretary, to O. D. Ashley, president, January 6, 1897.....	1676
365a—Letter, O. D. Ashley, president, to F. M. Hubbell, secretary, January 9, 1897.....	1676
365b—Telegram, W. H. Blodgett to F. M. Hubbell, January 13, 1897.....	1677
366—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbell, president, January 14, 1897.....	1678
366a—Letter, Wells H. Blodgett, general solicitor, to F. M. Hubbell, January 21, 1897.....	1679
367—Letter, F. M. Hubbell, secretary, to Col. W. H. Blodgett, general solicitor, February 3, 1897....	1679
367a—Letter, Wells H. Blodgett to F. M. Hubbell, February 9, 1897.....	1680
368—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, 2 18, 97...	1680
369—Letter, Wells H. Blodgett to F. M. Hubbell, January 21, 1897.....	1681
370—Names of Des Moines and St. Louis directors to be elected at meeting to be held January 25, 1897..	1681
371—Letter, Wells H. Blodgett, general solicitor, to F. M. Hubbell, January 22, 1897.....	1682
372—Proxy, Edgar T. Welles to F. M. Hubbell or A. B. Cummins, January 16, 1897.....	1682
373—Proxy, Wabash purchasing committee to F. M. Hubbell or A. B. Cummins, January 16, 1897....	1683
374—Letter, Wells H. Blodgett to F. M. Hubbell, February 1, 1897.....	1684

Exhibit 375—Letter, A. B. Cummins to Col. W. H. Blodgett, general solicitor, February 18, 1897.....	1684
376—Letter, A. B. Cummins to F. C. Hubbell, February 24, 1897.....	1686
377—Letter, Wells H. Blodgett to F. M. Hubbell, March 26, 1897.....	1687
378—Substitute No. 1 for section 3 in the proposed contract between the Des Moines Union Ry. Co. and its tenant companies, referred to in Exhibit 377.	1688
379—Substitute No. 2 for section 3 in the proposed contract between the Des Moines Union Ry. Co. and its tenant companies, referred to in Exhibit 377.	1689
380—Letter, O. D. Ashley to F. M. Hubbell, March 26, 1897 .....	1691
381—Letter, O. D. Ashley, president, to F. M. Hubbell, secretary, May 18, 1897.....	1692
382—Draft of proposed agreement between Des Moines Union Ry. Co. and tenant companies, February 3, 1897.....	1694
383—Original draft of contract between Des Moines Union Ry. Co. and tenant companies, February 3, 1897.....	1703
384—Draft of proposed agreement between Des Moines Union Ry. Co. and tenant companies, July 21, 1897.....	1712
385—Draft of proposed agreement between Des Moines Union Ry. Co. and tenant companies, July 21, 1897 .....	1713
386—Letter, F. M. Hubbell, secretary, to O. D. Ashley, president, July 18, 1895.....	1734
387—Letter, O. D. Ashley, president, to F. M. Hubbell, July 22, 1895.....	1735
388—Letter, O. D. Ashley, president, to F. M. Hubbell, secretary, August 7, 1895.....	1736
389—Circular of New York stock exchange, March 1, 1895 .....	1736
390—Letter, F. M. Hubbell, secretary, to O. D. Ashley, president, April 15, 1896.....	1741
391—Letter, O. D. Ashley, president, to F. M. Hubbell, president, April 18, 1896.....	1742
392—Letter, F. M. Hubbell, secretary, to O. D. Ashley, president, September 28, 1897.....	1742
393—Application of Des Moines Union Ry. Co. to lease bonds on New York stock exchange, September 28, 1897.....	1743
394—Receipt for fee for leasing bonds on New York exchange, October 27, 1897.....	1746
395—Letter, O. D. Ashley, president, to F. M. Hubbell, secretary, October 2, 1897.....	1746

	Page
Exhibit 286 Letter, C. D. Ashby, president, to F. M. Huddell, secretary, October 6, 1907.....	1747
287 Letter, F. M. Huddell, secretary, to C. D. Ashby, president, October 13, 1907.....	1748
288 Letter, C. D. Ashby, president, to F. M. Huddell, secretary, October 16, 1907.....	1749
289 Letter, J. C. Ottison, secretary, to F. M. Huddell, secretary, October 19, 1907.....	1749
408 Letter, F. M. Huddell, secretary, to J. C. Ottison, secretary, October 23, 1907.....	1750
401 Vendor of Two Motus Union Ry. Co. covering fee for listing bonds on New York stock exchange, October 2, 1907.....	1751
402 Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Huddell, president, March 29, 1907.....	1751
403 Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, May 9, 1907.....	1752
404 Letter, A. B. Cummins to Wells H. Hodgott, general auditor, July 24, 1907.....	1753
405 Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, November 29, 1907.....	1753
406 Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, December 20, 1907.....	1754
407 Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, February 7, 1908.....	1754
407a Letter, J. Ramsey, Jr., vice-president and general manager, to F. M. Huddell, June 15, 1908.....	1756
408 Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Huddell, president, October 18, 1908.....	1756
409 Letter, Roswell Miller, president, to F. M. Huddell, president, November 16, 1908.....	1757
410 Letter, Roswell Miller, president, to F. M. Huddell, president, November 18, 1908.....	1757
411 Letter, Roswell Miller, president, to F. M. Huddell, president, November 22, 1908.....	1758
412 Letter, Roswell Miller, president, to F. M. Huddell, president, November 22, 1908.....	1758
413 Letter, F. M. Huddell to Roswell Miller, president, November 22, 1908.....	1759
414 Letter, Roswell Miller, president, to F. M. Huddell, president, November 23, 1908.....	1760
414a Letter, Wells H. Hodgott to Joseph Ramsey, Jr., vice-president and general manager, November 25, 1908.....	1761

	Page
Exhibit 415 Letter, F. M. Huddell, president, to Roswell Miller, president, November 28, 1898.....	1763
416 Letter, Roswell Miller to F. M. Huddell, president, November 28, 1898.....	1764
417 Letter, P. M. Myers, secretary, to F. M. Huddell, president, November 28, 1898.....	1765
418 Letter, Roswell Miller, president, to F. M. Huddell, president, December 2, 1898.....	1765
419 Letter, Roswell Miller, president, to F. M. Huddell, president, December 2, 1898.....	1766
420 Letter, F. M. Huddell to Roswell Miller, president, December 2, 1898.....	1766
421 Letter from F. M. Huddell, addressed to "Dear Bro. & Son," December 8, 1898.....	1767
422 Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, November 29, 1898.....	1768
423 Letter, F. M. Huddell, secretary, to J. Ramsey, Jr., vice-president and general manager, December 20, 1898.....	1769
424 Letter, J. Ramsey, Jr., vice-president and general manager, to H. A. Lloyd, December 23, 1898....	1769
425 Letter, Roswell Miller, president, to F. M. Huddell, president, December 21, 1898.....	1770
426 Letter, J. Ramsey, Jr., vice-president and general manager, to F. M. Huddell, secretary, December 22, 1898.....	1770
427 Letter, H. A. Lloyd, assistant secretary, to J. Ramsey, Jr., vice-president and general manager, December 22, 1898.....	1770
428 Letter, F. M. Huddell, secretary, to J. Ramsey, Jr., vice-president and general manager, December 23, 1898.....	1771
429 Letter, J. Ramsey, Jr., vice-president and general manager, to Ed. W. H. Blodgett, December 24, 1898.....	1772
430 Draft of proposed terminal contract between Des Moines Union Ry. Co. and Des Moines Northern & Western R. R. Co.....	1772
431 Letter, Roswell Miller, president, to F. M. Huddell, president, December 30, 1898.....	1782
432 Letter, Wells H. Blodgett to F. M. Huddell, December 31, 1898.....	1782
433 Letter, F. M. Huddell, secretary, to Wells H. Blodgett, general solicitor, January 3, 1899.....	1783
434 Letter, Wells H. Blodgett to F. L. O'Leary, treasurer, January 9, 1899.....	1784
435 Letter, Wells H. Blodgett to F. M. Huddell, January 23, 1899.....	1784

Exhibit	136	Letter, Wells H. Hildgett to F. M. Hubbard, March 7, 1899.....	17
	137	Letter, Wells H. Hildgett to F. M. Hubbard, March 18, 1899.....	17
	138	Quitclaim deed of the How heirs to Wabash R. R. Co., February 1, 1899.....	14
	139	Quitclaim deed, Wabash R. R. Co. to Iowa Midway Union Ry. Co., March 29, 1899.....	17
	140	Letter, P. M. Myers, secretary, to F. C. Hubbard, January 16, 1899.....	17
	141	Letter, F. C. Hubbard, president, to J. Ramsey, Jr., vice-president and general manager, January 16, 1899.....	17
	142	Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbard, president, January 19, 1899.....	17
	143	Letter, Howard Miller, president, to F. M. Hubbard, February 18, 1899.....	17
	144	Telegram, Wells H. Hildgett to F. M. Hubbard, March 10.....	17
	145	Letter, Wells H. Hildgett to F. M. Hubbard, March 11, 1899.....	17
	146	Consent of Iowa Midway Union Ry. Co. and Iowa Midway Northern and Western R. R. Co. to an assignment that has or may be made by Wabash R. R. to Continental Trust Co., etc., March 14, 1899.....	17
	147	Assignment of contract, Wabash Railroad Co. to Continental Trust Company of New York, March 17, 1899.....	17
	148	Letter, Wells H. Hildgett to F. M. Hubbard, March 20, 1899.....	17
	149	Letter, Wells H. Hildgett to F. M. Hubbard, March 21, 1899.....	17
	150	Telegram, W. H. Hildgett to F. M. Hubbard, March 21, 1899.....	17
	151	Telegram, W. H. Hildgett to F. M. Hubbard, March 21.....	17
	152	Letter, P. M. Myers, secretary, to F. C. Hubbard, April 22, 1899.....	17
	153	Letter, P. M. Myers, secretary, to F. M. Hubbard, April 22, 1899.....	17
	154	Letter, F. C. Hubbard, president, to Mr. Ramsey, Jr., vice-president and general manager, September 25, 1899.....	180
	155	Letter, J. Ramsey, Jr., to F. C. Hubbard, president, September 27, 1899.....	180
	156	Farling memorandum, October 17, 1899.....	180
	157	Memorandum for new contract presented to Mr. Farling, October 17, 1899.....	180

	Page
Exhibit 456—Memorandum by Mr. Earling, October 17, 1900..	1900
459—Memorandum of offer made to Mr. Earling, October 17, 1900.....	1901
460—Letter, A. J. Earling, president, to F. C. Huddell, president, December 18, 1900.....	1904
461—Letter, A. J. Earling, president, to F. C. Huddell, president, December 18, 1900.....	1904
462—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, January 4, 1901.....	1904
463—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, January 25, 1901.....	1905
464—Letter, F. C. Huddell, president, to A. J. Earling, president, January 25, 1901.....	1905
465—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, January 27, 1901.....	1905
466—Letter, J. Ramsey, Jr., to F. C. Huddell, January 28, 1901.....	1907
467—Letter, F. C. Huddell to J. Ramsey, Jr., January 28, 1901.....	1907
468—Letter, J. Ramsey, Jr., to F. C. Huddell, January 28, 1901.....	1908
469—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, January 29, 1901.....	1908
470—Letter, J. Ramsey, Jr., to F. C. Huddell, president, January 31, 1901.....	1909
471—Miller memorandum, January 31, 1901, as to agreement of St. Paul Company after expiration of its contract, etc.....	1910
472—Letter, A. J. Earling, president, to F. C. Huddell, president, February 12, 1901.....	1910
473—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, February 17, 1901.....	1911
474—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president, February 19, 1901.....	1912
475—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president, February 22, 1901.....	1912
476—Letter, J. Ramsey, Jr., to F. C. Huddell, president, April 4, 1901.....	1914
477—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, May 26, 1901.....	1914
478—Letter, F. C. Huddell, president, to J. Ramsey, Jr., vice-president and general manager, February 4, 1901.....	1915

	Page.
Exhibit 479—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbell, president, February 12, 1901.....	1818
480—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, February 16, 1901.....	1819
481—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, April 25, 1901.....	1820
482—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, March 16, 1901.....	1821
483—Letter, A. J. Earling, president, to F. C. Hubbell, president, March 25, 1901.....	1822
484—Letter, J. Ramsey, Jr., to F. C. Hubbell, president, May 2, 1901.....	1822
485—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, May 6, 1901.....	1823
486—Letter, J. Ramsey, Jr., vice-president and general manager, to F. C. Hubbell, president, May 16, 1901.....	1825
487—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, May 17, 1901.....	1825
488—Letter, C. A. Goodnow, general superintendent, to F. C. Hubbell, president, June 4, 1901.....	1826
489—Letter, J. Ramsey, Jr., president, to F. C. Hubbell, president, January 24, 1902.....	1826
490—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., president, February 1, 1902.....	1827
491—Letter, J. Ramsey, Jr., president, to F. C. Hubbell, president, February 3, 1902.....	1828
492—Letter, J. Ramsey, Jr., president, to F. C. Hubbell, president, February 26, 1902.....	1828
493—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., president, March 3, 1902.....	1829
494—Letter, J. Ramsey, Jr., president, to F. C. Hubbell, president, March 5, 1902.....	1830
495—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., president, March 7, 1902.....	1832
496—Letter, F. C. Hubbell, president, to J. Ramsey, Jr., vice-president and general manager, January 14, 1902.....	1833
497—Letter, H. R. Williams, general manager, to J. A. Wagner, superintendent, March 9, 1903.....	1834
498—Letter, J. Ramsey, Jr., president, to F. C. Hubbell, president, March 11, 1903.....	1834
499—Letter, E. B. Pryor to J. A. Wagner, superintendent, March 27, 1903.....	1835



# INDEX.

XXXV

Page.

Exhibit 500—Contract between the Wabash Railroad Company and the Des Moines Union Railway Company, March 27, 1903.....	1836
501—Letter, E. B. Pryor to J. A. Wagner, superintendent, April 9, 1903.....	1839
502—Letter, E. B. Pryor to J. A. Wagner, superintendent, September 22, 1903.....	1839
503—Contract between the Wabash Railroad Company and the Des Moines Union Railway Company, October 14, 1903.....	1840
504—Letter, H. G. Haugan, comptroller and land commissioner, to J. A. Wagner, superintendent, March 7, 1904.....	1843
505—Letter, J. A. Wagner, superintendent, to H. G. Haugan, comptroller and land commissioner, March 22, 1904.....	1843
506—Letter, F. C. Hubbell, president, to F. A. Delano, president, December 13, 1905.....	1844
507—Letter, F. C. Hubbell, president, to E. W. McKenna, 2d vice-president, December 13, 1905....	1845
508—Letter, E. W. Adams, secretary, to H. D. Thompson, vice-president, January 4, 1906.....	1846
509—Letter, F. A. Delano to F. C. Hubbell, president, December 3, 1906.....	1847
510—Letter, E. B. Pryor to J. A. Wagner, superintendent, February 29, 1908.....	1847
511—Letter, F. A. Delano to J. A. Wagner, superintendent, March 20, 1908.....	1848
512—Letter, D. O. Ives to F. A. Delano, April 6, 1908..	1849
513—Letter, F. A. Delano to J. A. Wagner, superintendent, April 18, 1908.....	1850
514—Letter, E. B. Pryor to F. C. Hubbell, president, November 13, 1908.....	1851
515—Letter, F. M. Hubbell to O. D. Ashley, president, July 19, 1895.....	1851
516—Letter, Wells H. Blodgett to W. A. Park, November 23, 1895.....	1852
517—Letter, Wells H. Blodgett to W. A. Park, January 11, 1897.....	1853
518—Letter, Wells H. Blodgett to Bailey, Ballrich & Preston, October 2, 1899.....	1853
519—Petition in case of Des Moines Northern & Western R. R. Co. et al. vs. James F. Joy et al., in district court, Polk County, Iowa, filed October 1, 1895.....	1854
Exhibit A—Proposition of Polk & Hubbell to purchasing committee of Wabash, St. Louis & Pacific Ry. Co., October 9, 1886.....	1858
B—Acceptance of proposition by O. D. Ashley et al.....	1858

	Page.
Exhibit C—Supplementary agreement between Polk & Hubbell and James F. Joy et al., September 10, 1887.....	1853
Exhibit 520—Amendment to petition in case of Des Moines Northern & Western R. R. Co. et al. vs. Joy et al., in district court, Polk County, Iowa, filed December 23, 1896.....	1861
521—Answer in case of Des Moines Northern & Western R. R. Co. et al. vs. Joy et al., in district court, Polk County, Iowa.....	1863
522—Opinion in case of Des Moines Northern & Western R. R. Co. et al. vs. Joy et al., in district court, Polk County, Iowa.....	1867
523—Judgment in case of Des Moines Northern & Western R. R. Co. et al. vs. Joy et al., in district court, Polk County, Iowa.....	1868
523a—Agreement between Des Moines Union Ry. Co. and Des Moines & St. Louis R. R. Co. et al., May 15, 1890, as to wheelage on coal cars and trains..	1869
524—Lease, Des Moines Union Ry. Co. to Chicago, St. Paul & Kansas City Ry. Co., June 2, 1890..	1871
525—Extension of lease, Exhibit 524, May 14, 1894....	1878
526—Lease, Des Moines Union Ry. Co. to Chicago Great Western Ry. Co., July 2, 1896.....	1879
526a—Terminal contract between Des Moines Union Ry. Co. and Iowa Central Ry. Co., January 5, 1899.....	1894
527—Lease, Des Moines Union Ry. Co. to Chicago, Burlington & Quincy R. R. Co., September 3, 1901 .....	1901
528—Lease, Des Moines Union Ry. Co. to Des Moines, Iowa Falls & Northern Ry. Co., July 22, 1902..	1911
529—Lease, Des Moines Union Ry. Co. to Des Moines & Fort Dodge R. R. Co., December 1, 1904.....	1920
530—First mortgage, Wabash Railroad Co. to Continental Trust Co., January 1, 1899.....	1925
531—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., June 4, 1888.....	1933
532—Deed, Jefferson S. Polk et al. to Des Moines Union Ry. Co., June 4, 1888.....	1933
533—Deed, Jefferson S. Polk et al. to Des Moines Union Ry. Co., March 2, 1889.....	1933
534—Deed, Elizabeth T. Whitworth et al. to Des Moines Union Ry. Co., August 29, 1889.....	1933
535—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., February 1, 1890.....	1937
536—Deed, Chicago, Rock Island & Pacific Ry. Co. to Des Moines Union Ry. Co., March 1, 1890.....	1937
537—Deed, Des Moines & Fort Dodge R. R. Co. to Des Moines Union Ry. Co., March 1, 1890.....	1937

# INDEX.

xxxvii

	Page.
Exhibit 538—Deed, C. Huttenlocher et al. to Des Moines Union Ry. Co., June 14, 1890.....	1939
539—Deed, Peter Bennett et al. to Des Moines Union Ry. Co., June 21, 1890.....	1939
540—Deed, Ursula Brothi to Des Moines Union Ry. Co., August 25, 1890.....	1940
541—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., September 1, 1890.....	1941
542—Deed, Jefferson S. Polk et al. to Des Moines Union Ry. Co., September 4, 1890.....	1942
543—Deed, F. C. Hubbell, trustee, etc., to Des Moines Union Ry. Co., February 12, 1891.....	1942
544—Consent of F. M. Hubbell et al. to construction of track or switch on portions of Mulberry street in West Des Moines, etc., August 10, 1891.....	1943
545—Consent of F. M. Hubbell et al. to construction of track or switch on portions of Mulberry street, in West Des Moines, etc., August 10, 1891.....	1944
546—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., August 21, 1891.....	1945
547—Deed, Luke Caffrey et al. to Des Moines Union Ry. Co., August 22, 1891.....	1945
548—Deed, C. Huttenlocher et al. to Des Moines Union Ry. Co., October 14, 1891.....	1946
549—Deed, F. C. Hubbell et al. to Des Moines Union Ry. Co., December 23, 1892.....	1947
550—Ordinance of city council of Des Moines granting certain right of way to Des Moines Union Ry. Co., January 18, 1892.....	1947
551—Deed, F. Cooper to Des Moines Union Ry. Co., December 28, 1892.....	1948
552—Deed, F. C. Hubbell et al. to Des Moines Union Ry. Co., April 13, 1893.....	1949
553—Quitclaim deed, James F. How, trustee, to Des Moines Union Ry. Co., August 9, 1893.....	1949
554—Deed, City of Des Moines, Iowa, to Des Moines Union Ry. Co., December 14, 1894.....	1950
555—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., February 5, 1895.....	1951
556—Contract between Des Moines Union Ry. Co. et al. and L. Mott, May 9, 1895.....	1952
557—Ordinance of city council of Des Moines granting right of way to L. Mott, May 10, 1895.....	1953
558—Deed, S. B. Tuttle et al. to Des Moines Union Ry. Co., May 14, 1895.....	1954
559—Deed, Edwin Whitworth to Des Moines Union Ry. Co., August 14, 1895.....	1955
560—Quitclaim deed, Chicago, Rock Island & Pacific Ry. Co. to Des Moines Union Ry. Co. et al., October 10, 1895.....	1956

	Page.
Exhibit 561—Deed, J. F. Vincent et al. to Des Moines Union Ry. Co., September 7, 1895.....	1958
562—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., October 1, 1895.....	1960
563—Deed, Harry West et al. to Des Moines Union Ry. Co., June 29, 1896.....	1961
564—Deed, Matilda K. Sypher to Des Moines Union Ry. Co., September 1, 1896.....	1962
565—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., November 24, 1896.....	1962
566—Deed, Edwin Whitworth et al. to Des Moines Union Ry. Co., January 11, 1897.....	1963
567—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., February 22, 1898.....	1964
568—Deed, F. M. Hubbell, trustee, to Des Moines Union Ry. Co., May 2, 1898.....	1964
569—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., May 2, 1898.....	1965
570—Resolution of city council of Des Moines granting to Des Moines Union R. R. Co. certain rights, November 3, 1898.....	1966
571—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., February 15, 1899.....	1966
572—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., February 15, 1899.....	1967
573—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., April 1, 1899.....	1968
574—Ordinance of city council of Des Moines vacating certain alley, August 7, 1899.....	1970
575—Resolution of city council of Des Moines granting right to Des Moines Union Ry. Co. to cross certain street, March 31, 1900.....	1971
576—Deed, F. C. Hubbell et al. to Des Moines Union Ry. Co., May 31, 1900.....	1972
577—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., June 21, 1900.....	1973
578—Deed, Albert B. Cummins, trustee, etc., to Des Moines Union Ry. Co., October 15, 1901.....	1973
579—Resolution of city council of Des Moines granting right to construct certain railway tracks, February 24, 1902.....	1974
580—Resolution of city council of Des Moines granting to Des Moines Union Ry. Co. certain right of way, etc., April 5, 1902.....	1975
581—Resolution of city council of Des Moines granting right to Des Moines Union Ry. Co. to lay certain tracks, April 3, 1902.....	1975
582—Deed, F. C. Hubbell, trustee, et al. to Des Moines Union Ry. Co., May 7, 1902.....	1975

# INDEX.

xxxix

Page.

Exhibit 583—Deed, Charles H. Getchell et al. to F. M. Hubbell, July 14, 1902.....	1976
584—Deed, Charles H. Getchell et al. to F. M. Hubbell, July 14, 1902.....	1977
585—Contract between Des Moines Union Ry. Co. and Getchell & Martin Lumber & Mfg. Co. et al., June 17, 1902.....	1978
586—Request of Des Moines Union Ry. Co. upon Getchell & Martin Lumber Mfg. Co. to make certain conveyances and consents, June 18, 1902....	1982
587—Release of damages from Getchell & Martin Lumber & Mfg. Co. to Des Moines Union Ry. Co., July 18, 1902.....	1984
588—Deed, Getchell & Martin Lumber & Mfg. Co. to F. M. Hubbell, July 18, 1902.....	1987
589—Grant of right of way from F. M. Hubbell et al. to Des Moines Union Ry. Co., July 21, 1902.....	1988
590—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., July 21, 1902.....	1989
591—Deed, Des Moines Water Works Co. to Des Moines Union Ry. Co., July 21, 1902.....	1990
592—Receipt of E. R. Bennett, city clerk, to Des Moines Union Ry. Co. for certain agreements, etc., September 12, 1902.....	1992
593—Resolution of city council of Des Moines granting to Des Moines Union Ry. Co. right of way, August 23, 1902.....	1992
594—Deed, C. C. Cole, trustee, to Des Moines Union Ry. Co., October 8, 1902.....	1994
595—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., October 8, 1902.....	1994
596—Deed, C. Huttenlocher et al. to Des Moines Union Ry. Co., October 18, 1902.....	1995
597—Deed, E. E. Cochran et al. to Des Moines Union Ry. Co., October 18, 1902.....	1996
598—Deed, B. Beamblossom et al. to Des Moines Union Ry. Co., October 20, 1902.....	1996
599—Deed, Bridget O'Connor to Des Moines Union Ry. Co., October 24, 1902.....	1997
600—Deed, Des Moines Western Ry. Co. to Des Moines Union Ry. Co., March 16, 1903.....	1998
601—Deed, James Callahan et al. to Des Moines Union Ry. Co., March 28, 1903.....	1999
602—Deed, James Watt et al. to Des Moines Union Ry. Co., October 1, 1903.....	2000
603—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., November 12, 1903.....	2001
604—Deed, F. M. Hubbell et al. to Des Moines Union Ry. Co., November 12, 1903.....	2002
605—Deed, Annie S. Redhead to Des Moines Union Ry. Co., November 24, 1903.....	2003

Exhibit 606—Deed, Chicago, Rock Island and Pacific Ry. Co. to Des Moines Union Ry. Co., February 25, 1908, . . .	2006
607—Deed, City of Des Moines, Iowa, to Des Moines Union Ry. Co., March 10, 1906, . . .	2005
608—Deed, Charles A. Rawson et al. to Des Moines Union Ry. Co., December 31, 1907, . . .	2006
609—Letter, F. M. Hubbell to A. A. Talmage, October 18, 1887, . . .	2007
610—Assignment of one share of Des Moines Union Ry. Co., Mary R. Talmage to James F. How, . . .	2008
611—Proxy of A. L. Hopkins, October 21, 1887, one share Des Moines Union Ry. Co. stock, . . .	2008
612—Proxy of G. M. Dodge, October —, 1887, one share Des Moines Union Ry. Co. stock, . . .	2009
613—Proxy of James F. How, October 27, 1887, two shares Des Moines Union Ry. Co. stock, . . .	2009
614—Notice of amendment of articles of incorporation of Des Moines Union Ry. Co., dated April 23, 1890, and signed by G. M. Dodge, president, . . .	2010
615—Affidavit of publication of notice, Exhibit 614, . . .	2011
616—Proxy of purchasing committee to Charles M. Hays for meeting of January 6, 1893, . . .	2011
617—Proxy of purchasing committee for meeting on January 25, 1894, proxy dated January 19, 1894, . . .	2012
618—Proxy of Charles M. Hays for meeting of directors on November 14, 1894, proxy dated November 12, 1894, . . .	2012
619—Proxy of purchasing committee, dated January 25, 1895, for meeting of stockholders of Des Moines Union Ry. Co. on January 30, 1895, . . .	2013
620—Telegram, Wells H. Blodgett to A. B. Cummins, . . .	2013
621—Proxy of Henry L. Magee to A. B. Cummins, dated September 16, 1897, for meeting of directors on September 20, 1897, . . .	2014
622—Proxy of J. Ramsey, Jr. to A. B. Cummins, dated September 16, 1897, for meeting of directors of Des Moines Union Ry. Co. to be held September 20, 1897, . . .	2014
623—Minutes of adjourned meeting of directors held September 20, 1897, . . .	2014
624—Letter, J. Ramsey, Jr., vice-president and general manager, to F. M. Hubbell, secretary, February 9, 1898, . . .	2015
625—Proxy of J. Ramsey, Jr., and Henry L. Magee to F. M. Hubbell, for meeting of directors on January 29, 1898, proxy dated January 28, 1898, . . .	2016
626—Proxy of purchasing committee for stockholders' meeting on January 6, 1898, proxy dated December 31, 1897, . . .	2016

# INDEX.

xli

Page.

Exhibit 627—Proxy of purchasing committee for stockholders' meeting of January 6, 1898, proxy dated December 31, 1897.....	2017
628—Proxy of J. Ramsey, Jr., and Henry L. Magee, dated March 29, 1898, for directors' meeting to be held March 31, 1898.....	2017
629—Proxy of J. Ramsey to F. M. Hubbell, dated March 11, 1899, for meeting of Des Moines Union Ry. Co. on March 14, 1899.....	2018
630—Proxy of Henry L. Magee to F. M. Hubbell, dated March 11, 1899, for meeting of Des Moines Union Ry. Co. on March 14, 1899.....	2018
631—Proxy of Continental Trust Company of New York to J. Ramsey, Jr., for meeting of stockholders on October 3, 1899, proxy dated September 27, 1899.....	2019
632—Proxy of Chicago, Milwaukee & St. Paul Ry. Co. to C. A. Goodnow for stockholders' meeting on January 4, 1900, proxy dated December 30, 1899.....	2020
633—Letter, J. Ramsey, Jr., to F. M. Hubbell, president, January 2, 1900.....	2021
634—Proxy of Continental Trust Company to F. M. Hubbell for stockholders' meeting on January 4, 1900, proxy dated December 30, 1899.....	2021
635—Proxy of Chicago, Milwaukee & St. Paul Ry. Co. to E. W. McKenna and W. T. Underwood, dated January 4, 1900, for meeting of stockholders on January 4, 1900.....	2022
636—Proxy of New York Trust Company, dated January 8, 1900, to E. B. Pryor for stockholders' meeting to be held on January 4, 1900.....	2022
637—Letter, F. M. Hubbell to O. D. Ashley, secretary, August 11, 1899.....	2023
638—Letter, O. D. Ashley, president, to F. M. Hubbell, August 15, 1899.....	2023
639—Letter, F. M. Hubbell to O. D. Ashley, president, August 19, 1899.....	2024
640—Letter, O. D. Ashley, president, to F. M. Hubbell, August 22, 1899.....	2026
641—Letter, F. M. Hubbell to O. D. Ashley, August 28, 1899.....	2026
642—Letter, O. D. Ashley, president, to F. M. Hubbell, president, September 2, 1899.....	2027
643—Letter, F. M. Hubbell to A. D. Ashley, May 17, 1895.....	2027
644—Assignment of purchasing committee to F. M. Hubbell of 498 shares of Des Moines Union Ry. Co. stock, August 22, 1899.....	2028

	Page
645—Assignment of purchasing committee to Continental Trust Co. of shares of stock of Des Moines Union Ry. Co., March 21, 1899.....	2059
Stipulation for approval and certification of evidence and exhibits as printed for use on hearing in district court and for use thereof as part of record for purposes of appeal, etc.....	2061
Order of district judge approving for purposes of appeal the testimony and exhibits as printed for use upon hearing in district court, etc.....	2062
Record entry of hearing, February 11, 1913.....	2065
Record entry of hearing, February 12, 1913.....	2065
Record entry of hearing, February 13, 1913.....	2065
Record entry of hearing, February 14, 1913.....	2066
Order of submission, February 15, 1913.....	2066
Memorandum opinion of the district court.....	2066
Petition of Wabash Railway Co. for leave to file original bill of complaint in the nature of a supplemental bill.....	2067
Order granting leave to Wabash Railway Co. to file its original bill of complaint in the nature of a supplemental bill.....	2068
Order substituting Wabash Railway Co. for Wabash Railroad Co. as party complainant and that bill of complaint filed by Wabash Railway Co. be considered as supplemental to the amended bill of complaint.....	2068
Bill of complaint of Wabash Railway Co. in the nature of a supplemental bill.....	2064
Answer of Chicago, Milwaukee & St. Paul Ry. Co. to bill of complaint in nature of supplemental bill filed by Wabash Railway Co. ....	2068
Answer of Des Moines Union Railway Co. et al. to bill of complaint in nature of supplemental bill filed by Wabash Railway Co. ....	2068
Record entry of hearing for purpose of settling decree, May 15, 1916 .....	2064
Memorandum of district court upon entry of decree.....	2064
Decree, August 29, 1916.....	2065
Petition for appeal by complainants and order allowing same, etc., .....	2068
Assignment of errors on appeal by complainants.....	2069
Joint praecipe for transcript on appeal.....	2074
Supersedeas bond of complainants.....	2075
Petition for appeal by defendants and order allowing same, etc., .....	2077
Assignment of errors by defendants.....	2078
Supersedeas bond of defendants.....	2078
Joint praecipe for transcript on defendants' appeal.....	2079
Clerk's certificate to transcript.....	2080
Proceedings in the U. S. circuit court of appeals.....	2082
Appearance of Mr. J. C. Cook and Mr. John N. Hughes as counsel for the appellant Chicago, Milwaukee & St. Paul Railway Co. in cause No. 4885.....	2082
Appearance of Mrs. James L. Minnis and Mr. N. S. Brown as counsel for the appellants Wabash Railroad Co. et al. in cause No. 4885.....	2083

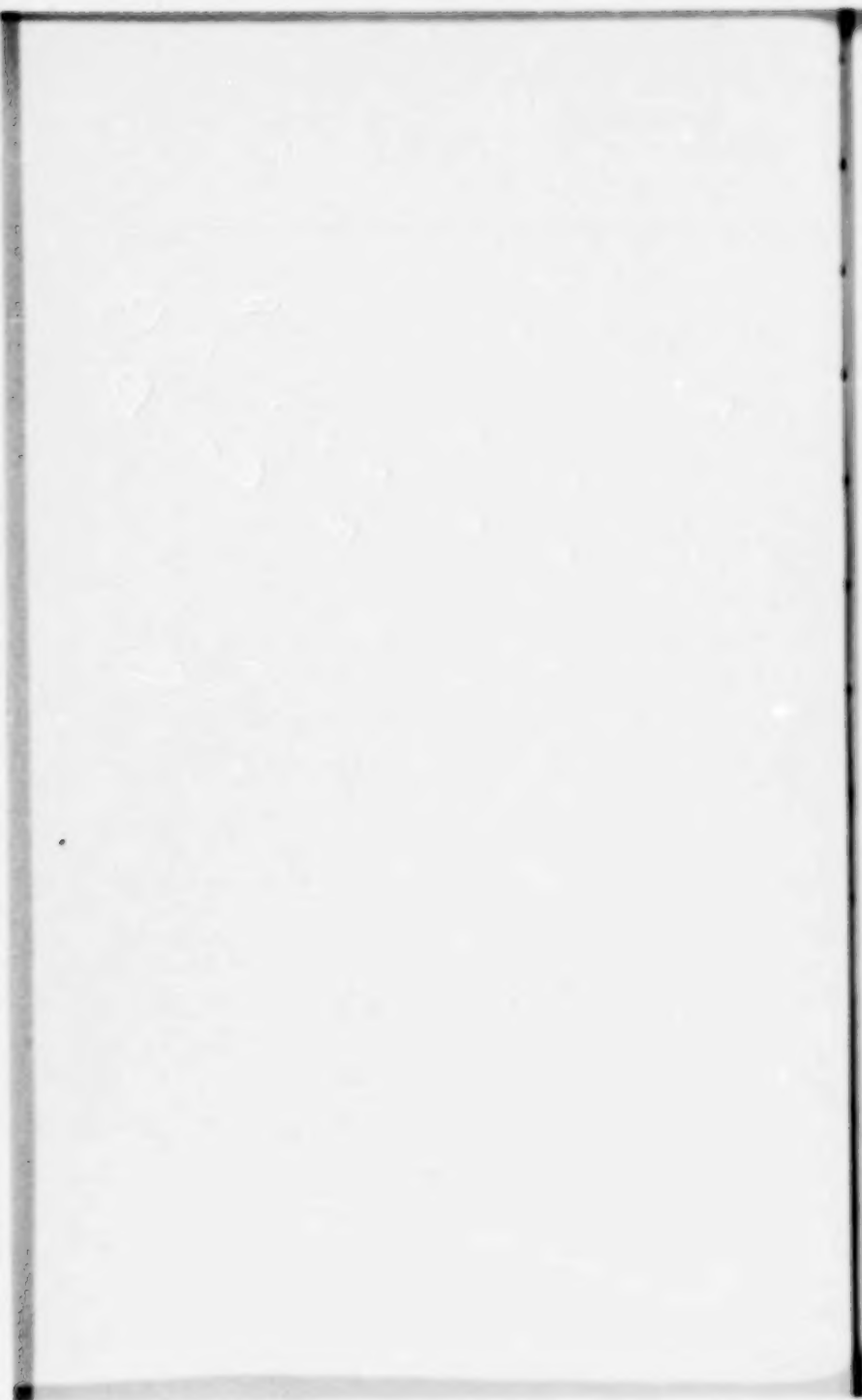


# INDEX.

xliii

Page.

Appearance of Mr. F. W. Lehmann, Mr. J. L. Parrish, and Mr. W. E. Miller as counsel for appellees in cause No. 4885.....	2083
Appearance of Mr. Frederick W. Lehmann as counsel for appellees in cause No. 4885.....	2084
Appearance of Mr. Burton Hanson as counsel for appellants in cause No. 4885.....	2084
Appearance of Mr. F. W. Lehmann, Mr. J. L. Parrish, and Mr. W. E. Miller as counsel for appellants in cause No. 4886.....	2085
Appearance of Mr. James L. Minnis and Mr. N. S. Brown as counsel for the appellees Wabash Railroad Co. et al. in cause No. 4886 .....	2085
Appearance of Mr. J. C. Cook and Mr. Burton Hanson as counsel for appellees in cause No. 4886.....	2085
Order of argument.....	2086
Order of submission.....	2086
Opinion, U. S. circuit court of appeals.....	2088
Issue, U. S. circuit court of appeals.....	2124
Petition of Chicago, Milwaukee & St. Paul Railway Co. et al. for a rehearing.....	2125
Order denying petition of Chicago, Milwaukee & St. Paul Railway Co. et al. for a rehearing.....	2143
Petition of Des Moines Union Railway Co. et al. for a rehearing..	2144
Order denying petition of Des Moines Union Railway Co. et al. for a rehearing.....	2146
Motion of Des Moines Union Railway Co. et al. to modify decree... order denying motion of Des Moines Union Railway Co. et al. to modify decree.....	2147
Motion for stay of mandate in cause No. 4885.....	2150
Motion for stay of mandate in cause No. 4886.....	2151
Order staying mandate.....	2152
Clerk's certificate to transcript.....	2154
Writs of certiorari and returns.....	2155



*Original.*

TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Eighth Circuit.

No. 4885.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., et al., Appellants,

vs.

DES MOINES UNION RAILWAY COMPANY, et al., Appellees.

No. 4886.

DES MOINES UNION RAILWAY COMPANY, et al., Appellants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO., et al., Appellees.

Appeals from the District Court of the United States for the Southern  
District of Iowa.

Filed February 3, 1917.

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1918, of said Court, before the Honorable William C. Hook, the Honorable Walter L. Smith and the Honorable Kindrough Stone, Circuit Judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,

*Clerk of the United States Circuit Court  
of Appeals for the Eighth Circuit.*

Be it remembered that heretofore, to-wit: on the third day of February, A. D. 1917, a transcript of record, pursuant to an appeal and a cross-appeal allowed by the District Court of the United States for the Southern District of Iowa, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in certain causes wherein the Chicago, Milwaukee & St. Paul Railway Company, et al., were Appellants, and the Des Moines Union Railway Company et al., were Appellees, and the Des Moines Union Railway Company et al., were Appellants, and the Chicago, Milwaukee & St. Paul Railway Company et al., were appellees, which said transcript as prepared and printed, under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

Pleas and Proceedings in a cause lately pending in the the District Court of the United States for the Southern District of Iowa, Central Division, wherein Chicago, Milwaukee & St. Paul Railway Company and The Wabash Railroad Company are Appellants and Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son, Appellees and numbered 4001-Eq. (old number 2119-Eq.)

Appellantes:

J. C. Cook, Cedar Rapids, Iowa. John N. Hughes, Cedar Rapids, Iowa, Attorneys for C. M. & St. P. Ry. Co.

J. L. Minnis, St. Louis, Mo., Attorney for Wabash Railroad Co.

J. L. Parrish, Des Moines, Iowa. F. W. Lehmann, St. Louis, Mo., Attorneys for Defendants.

WM. C. McARTHUR,  
*Clerk Des Moines, Iowa.*

*(Citation on Appeal by Chicago, Milwaukee & St. Paul Ry. Co. et al.)*

In the District Court of the United States, Southern District of Iowa,  
Central Division.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and THE  
Wabash Railroad Company, and The Wabash Railway Company,  
Complainants,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL,  
FREDERICK C. HUBBELL, and F. M. HUBBELL & SON, Defendants.

UNITED STATES OF AMERICA:

To Des Moines Union Railway Company, Frederick M. Hubbell,  
Frederick C. Hubbell, and F. M. Hubbell & Son—Greeting:

You are hereby cited and admonished to be and appear in the  
United States Circuit Court of Appeals for the 8th circuit at the city

of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the District Court of U. S., in and for the southern district of Iowa, wherein Chicago, Milwaukee & St. Paul Railway Company, and The Wabash Railroad Company, and The Wabash Railway Company are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said Chicago, Milwaukee & St. Paul Railway Company, and The Wabash Railroad Company, and The Wabash Railway Company, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin J. Wade, Judge of the United States District Court, for the southern district of Iowa, this 18th day of October, 1916.

MARTIN J. WADE,  
*Judge of U. S. District Court.*

Service of the above and foregoing Citation is hereby acknowledged this 19th day of October, 1916.

F. W. LEHMANN,  
PARKER, PARRISH & MILLER,  
*Attorneys for Des Moines Union Ry. Co.,  
Frederick M. Hubbell, Frederick C.  
Hubbell and F. M. Hubbell & Son.*

Endorsed: Filed in the District Court on October 23, 1916.

*(Citation on Appeal by Des Moines Union Ry. Co. et al.)*

The United States of America to the Chicago, Milwaukee & St. Paul Railway Company, The Wabash Railroad Company, and Wabash Railway Company, Complainants, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the district court of the United States in and for the southern of Iowa, wherein the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F.

M. Hubbell Son, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin J. Wade, Judge of the United States district court for the southern district of Iowa, this 13th day of November, A. D. 1916.

MARTIN J. WADE,

*Judge of the District Court, Southern District of Iowa.*

We hereby accept due and legal service of the foregoing citation this 18th day of November, A. D. 1916.

J. C. COOK AND

JOHN N. HUGHES,

COOK, HUGHES & SUTHERLAND,

*Attorneys for Complainant, Chicago.*

*Milwaukee & St. Paul Railway Company.*

JAMES L. MINNIS,

*Attorney for Complainant- The Wabash Railroad Company and Wabash Railway Company.*

Endorsed: Filed in the District Court on Dec. 20, 1916.

Be It Remembered that on the 5th day of February A. D. 1907, there was filed in the Circuit Court of the United States for the Southern District of Iowa, Central Division, a bill of complaint in cause No. 2419-Eq. wherein Chicago, Milwaukee & St. Paul Railway Company and Wabash Railroad Company were complainants and Des Moines Union Railway Company was defendant which said bill of complaint is in words and figures as follows, to-wit:

*Bill of Complaint.*

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY and THE  
WABASH RAILROAD COMPANY, Complainants,

vs.

DES MOINES UNION RAILWAY COMPANY, Defendant.

In Equity.

To the Honorable the Judges of the Circuit Court of the United States, for the Southern District of Iowa, Central Divisions:

The Chicago, Milwaukee & St. Paul Railway Company, a railroad corporation created by and under the laws of the State of Wisconsin,

and a citizen of said State, having its principal office in the City of Chicago, State of Illinois, and the Wabash Railroad Company, a consolidated railroad corporation organized under the laws of the States of Ohio, Indiana, Illinois, Michigan and Missouri, first created by and under the laws of the State of Ohio, and a citizen of said State, having its principal office in the City of St. Louis, State of Missouri, bring this, their bill, against the Des Moines Union Railway Company, a corporation created by and under the laws of the State of Iowa, having its principal office in the City of Des Moines, in said last named State, and a citizen of said State of Iowa:

## I.

And thereupon your orators complain and say that on and prior to the second day of January, 1882, the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, were *respectfully* engaged in the construction and operation of separate and independent lines of railroad within the State of Iowa, the railroad of the first named Company extending from Albia to the City of Des Moines, the railroad of the second named company extending from Spirit Lake to the said City of Des Moines, and the railroad of the last named company extending from Boone to the said City of Des Moines. That said companies, desiring to economize in the cost of construction and operation of terminal facilities in said City of Des Moines, where the said lines of railroad converge and terminated, and to reduce as far as practicable the cost and expense of handling and interchanging traffic between said railroads, and with other railroads entering said city, all of which would result in great advantage to the public as well as to such railroad companies, united in an arrangement for the acquisition, construction and operation of depot, yard and other terminal facilities in said City, to be held and used in common by and for the benefit of said Railroad Companies, their successors and assigns.

## II.

Your orators further show that in pursuance of the purpose aforesaid, said companies purchased and acquired certain properties in said City of Des Moines, and in order to more clearly define and carry out the aforesaid purpose of acquiring and establishing terminal facilities to be held and used by and for the common benefit of all said railroads, a written contract was made and executed by the parties above named, on or about the 2nd day of January, A. D. 1882, which contract is in words and figures substantially as follows:



"This Agreement, made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the several individual signers hereto, Witnesseth:

First. The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

Second. In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of Jas. F. How, individually, Jas. F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third. It is mutually agreed by the parties above named, that the expense incurred by the purchase and improvements above mentioned and such other as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchase and improvement.

Fourth. The title to said property shall be and remain in a trustee to be named by agreement by said Companies, but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth. The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustees upon demand and reimbursement.

Sixth. The Des Moines and St. Louis Company, shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two companies, the apportionment to be determined by the use thereof which they shall respectively make as

evidence by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

Seventh. The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

Eighth. It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories and other sources of trade in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge tracks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefor shall be determined by arbitration.

Ninth. Taxes and assessments levied upon said property shall be charged to maintenance account.

Tenth. In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the Companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies, parties hereto.

Eleventh. All differences arising under this agreement shall be referred to arbitration; one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company, and the third by the two thus selected. The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis, and the Des Moines Northwestern, then the second arbitrator shall be chosen by the Des Moines Northwestern, and not by the St. Louis, Des Moines & Northern.

Twelfth. It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street, in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement.

In Witness Whereof, the said Railway Companies parties hereto have caused these presents to be executed by their respective Presidents under their respective corporate seals, attested by the Secretaries of the said Companies, and the several individual signers hereto have executed the same the day, year first above written.

THE DES MOINES AND ST. LOUIS  
RAILWAY COMPANY,  
By J. S. CLARKSON,  
*President.*

Attest:

J. S. POLK, *Secretary.*

THE DES MOINES NORTHWESTERN  
RAILWAY COMPANY,  
By J. S. POLK,  
*President.*

Attest:

J. S. RUNNELLS, *Secretary.*

THE ST. LOUIS, DES MOINES AND  
NORTHERN RAILWAY COMPANY,  
By J. S. CLARKSON,  
*President.*

Attest:

J. S. POLK, *Secretary.*

Your orators further show that shortly prior to the execution of the above named contract, by arrangement with the Des Moines and St. Louis Railroad Company, and the Des Moines Northwestern Railway Company, the Wabash, St. Louis and Pacific Railway Company, became lessee of all the rights and properties of said two companies, and furnished the money and paid for said terminal real estate and improvements on behalf of said two last named Companies, and said Wabash, St. Louis and Pacific Railway Company also gave its consent in writing to the execution of said contract of January 2nd, 1882, by said two companies.

## III.

Your orators further show that in further execution of said contract, and especially of paragraph Fourth thereof, providing that the terminal properties should be held by a Trustee for the joint use and occupation of all of said railway companies upon the terms in said contract described, a meeting was held at the instance of said contracting parties, by certain individuals in said City of Des Moines, on the 10th day of December, 1884, for the purpose of organizing a corporation to take and hold said terminal properties as such Trustee in accordance with the terms of said contract. That at said meeting the following resolution and Articles of Incorporation of the defendant the Des Moines Union Railway Company, were unanimously adopted, to-wit:

"Resolved, that for the purpose of carrying out the objects and purposes of the agreement heretofore, to-wit, on the 2nd day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company and others (which is set out in full in the following Articles of Incorporation); That the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company, to-wit:

Whereas, The Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Iowa, and have secured certain franchises, purchased certain realty and made certain improvements thereon—which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions, at their joint expense—in accordance with a contract made and entered into by and between said Companies and Grenville M. Dodge, and James F. How, Trustees, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to-wit,

(Here follows agreement of January 2nd, 1882, copies in Paragraph II of this bill, which to avoid repetition, is omitted here.)

Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said Companies; and

Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was the understanding of the parties that such Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto;

Now Therefore, for the purpose aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following,

### Articles of Incorporation.

Article I. The name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be Des Moines, Iowa.

Article II. The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, store-houses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed shall possess all the powers conferred upon corporations for pecuniary profit by Chapter I of Title IX of the Code and the amendments thereto. All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract, entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, James F. How, Jas. F. How, Trustee, and Grenville M. Dodge. The said Company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company, provided that the assent in writing of the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and The St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

Article 3. The capital stock of this corporation shall be One Million Dollars (\$1,000,000.00), which shall be divided into shares of One Hundred Dollars (\$100.00) each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Rail-

way Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How, and Grenville M. Dodge.

Article 4. The affairs of the company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of each year. The provisional Board of Directors, who shall hold office until the first Thursday in January, A. D. 1886, shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnels, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company, and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certificates shall be conclusive.

The provisions herein with respect to the nomination for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders duly called, and shall have been approved by more than three-fourths of all the stockholders, and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided.

The Directors shall elect, from their number, a President, Vice President, Secretary and Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

Article 5. The President, Vice President, Secretary and Treasurer, shall possess the powers and discharge the duties of like officers of

similar corporations, subject to the limitations imposed by these Articles. The officers, hereby constituted, who shall hold their places until the first Thursday in January, 1886, or until their successors are duly chosen, shall be as follows:

President ..... G. M. Dodge.  
Vice President ..... Jas. F. How.  
Secretary & Treasurer ..... F. M. Hubbell.

Article 6. The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article 7. The highest amount of indebtedness to which the corporation may at any time subject itself shall be the amount authorized by law.

Article 8. Meetings of the Board of Directors may be called by the President, or, in case of his absence or disability, by the Vice President, and shall be called upon request preferred in writing by two members of the Board.

Article 9. These articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of the stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation—published in the City of Des Moines, Iowa.

Article 10. This corporation shall commence on the fifth day of December, A. D. 1884, and continue fifty years, with the right of renewal.

In Testimony Whereof, we have hereunto set our names this 10th day of December, A. D. 1884.

J. S. POLK,  
F. M. HUBBELL,  
J. S. RUSSELLS."

And thereupon the said Articles of Incorporation were on said same day duly signed and acknowledged by said individuals, and recorded as required by law, and the said Des Moines Union Railway Company was accordingly duly incorporated under the laws of Iowa.

## IV.

And your orators further show that thereafter, on or about the first day of January, 1885, said Railroad Companies, G. M. Dodge and James F. How notified said Trustee Company, the Des Moines Union Railway Company, that each had approved its organization, and had directed the surrender and delivery to it of the property and franchises mentioned in and acquired in pursuance of said contract of January 2nd, 1882, and requested it to take possession thereof, and maintain and operate the same for the purposes and on the terms stated in said contract, and that they desired to transfer said property to it in accordance with said contract; whereupon said Des Moines Union Railway Company accepted said proposed transfer, management and operation of said terminal properties and franchises, and instructed its President to make such order as might be necessary to render its control and management effective as provided in said contract, and also appointed a Committee consisting of its President, Vice President, Secretary and Treasurer, to arrange with the several parties to said contract for the transfer of said properties and franchises, and agree with them in reference to the amounts of its bonds and capital stock to be delivered to each of them in payment for said properties, and to procure such conveyances and transfers as might be necessary to fully invest it with the title, control and management of said properties, as Trustee, in accordance with said contract of January 2nd, 1882; and thereupon authorized the issuance of bonds and stock for the purpose aforesaid.

## V.

Your orators further show that thereafter, on or about November 8th, 1887, said companies having the equitable and beneficial ownership of said terminal properties respectively directed said individuals to make conveyances of the portions held by them in Trust, as aforesaid, to said Trustee Company, in accordance with the contract of January 2nd, 1882; and thereupon said James F. How executed and delivered to said Des Moines Union Railway Company, his certain deeds of conveyance, reciting that the property therein described had been purchased and paid for with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company, and the legal title thereto for convenience conveyed to him in trust, and that the same was so acquired and held for the purposes and upon the terms set forth in said contract of January 2nd, 1882, and conveying to said Trustee Company, in pursuance of the above named direction of said



Companies, and for the consideration of One Dollar (\$1.00), the real estate so held by him in Trust as aforesaid.

And thereupon said G. M. Dodge did likewise convey and quit-claim to the said Des Moines Union Railway Company, in accordance with the aforesaid direction, and for the expressed consideration of One Dollar (\$1.00) the real estate held by him in Trust as aforesaid.

All of which deeds of conveyance respectively appear of record in the office of the Recorder of said County of Polk, State of Iowa, in books 291, pages 176, 178, 187, 171.

And thereupon the Des Moines and St. Louis Railroad Company on like trustee assigned and conveyed to said Des Moines Union Railway Company certain real estate, property and franchises acquired in its name, to be held and used in trust for the purposes aforesaid, all of which properties so conveyed to said Trustee Company, are included in the description of the properties embraced in the mortgage or Deed of Trust of November 1st, 1887, as hereinafter set out.

## VI.

Your statutes further show that in pursuance of the authority, and for the purposes above recited, an issue of eight hundred (800) bonds of the par value of One Thousand Dollars (\$1000.00) each, was provided for by said Des Moines Union Railway Company and secured by mortgage or deed of trust bearing date the first day of November, 1887; and conveying to the Central Trust Company of New York as Trustee, in trust to secure the afore-mentioned bonds, the terminal properties acquired and then held as aforesaid by the said Trustee Company, and described therein as follows:

Commencing at the east end of Market Street, in Brooks & Co.'s addition to Des Moines, Iowa, and running thence west on Market Street, crossing Twenty-fourth Street, Twenty-third Street, Twenty-second Street, Nineteenth Street and Seventeenth Street to the west line of East Eleventh Street in said City; thence westerly along and across Vine Street from East Eleventh Street to East Eighth Street and, over and along the alleys in blocks twenty-one, twenty-two and twenty-three of the town of Des Moines, now included in the City of Des Moines, crossing East Twelfth Street, East Eleventh Street, East Tenth Street and East Ninth Street, thence west between Court Avenue and Vine Street, crossing all the streets and alleys of said

City between East Ninth Street and East Fourth Street, thence westerly along the south alley between Court Avenue and Vine Street in said City to West Fifth Street, crossing East Fourth Street, East Third Street, East Second Street and Front Street, Water Street, West Second Street, West Third Street, West Fourth Street and West Fifth Street, and across all north and south alleys between East Fourth Street and West Fifth Street of said City, thence westerly in said City on the alley between Cherry Street and Vine Street from West Fifth Street to the line of Fourteenth Street or Section Street if extended south of Mulberry Street, crossing west Sixth Street, west Seventh Street, West Eighth Street, West Ninth Street, West Tenth Street, West Eleventh Street, West Twelfth Street, West Thirteenth Street and thence westwardly to Farnham Street and crossing all the north and south alleys of said City between West Fifth Street and West Thirteenth Street, together with all other lines, branches, extensions, switches and side tracks, which are now or may be hereafter constructed, to connect the lines of property of said Company with the lines of other railway companies converging in Des Moines, Iowa, or which are or may be built to any other point within said City.

Also all lots of land upon any part of which the said railroad, its extensions, side tracks or branches, or any of them, or any depot, shops, round houses, water tanks or other structures now are or may be hereafter constructed, and of which the said railway company is or may become the owner or holder by deed, lease or other beneficial interest, to the full extent of said railway company's interest therein, as the same does now or may hereafter exist.

Also the bridge of said railway company over and across the Des Moines River in said City, touching upon and lying immediately north of the south alley between Court Avenue and Vine Street in said City, with all the approaches and appurtenances thereto, owned or used by said company in connection therewith.

Also all the property and realty embraced in the several conveyances made to the said Des Moines Union Railway Company by James F. How, Trustee; James F. How, Greenville M. Dodge, the Des Moines Northwestern Railway Company, the Des Moines and St. Louis Railway Company, and the St. Louis, Des Moines and St. Louis Railway Company, and the St. Louis, Des Moines and Northern Railway Company, or any other person or corporation not specially named above, and for which conveyance reference is hereby prayed to the records of Polk County, Iowa.

And all other branch or tributary roads which are now owned or that may be hereafter acquired, located or constructed, including the right of way therefor, the road-bed thereof, the superstructure and tracks placed or to be placed thereon and all station, depot and shop grounds, yards and other grounds used and to be used in connection therewith, and all rails, railways, bridges, tracks, sidings, switches, fences, turn-tables, water tanks, viaducts, culverts, main passenger and other depots, station houses, freight houses, machine shops and all other structures, buildings and fixtures now or hereafter acquired or to be acquired for the use of the parties of the first part or the business thereof.

It being the intention of said Des Moines Union Railway Company to convey to said trustee, not only the property specifically described herein, but also

All and Singular the whole line of railroad of the party of the first part, as the same now is or may be hereafter located, constructed or acquired under its charter, with all its tracks, side tracks and switches; and also all lines of road connecting its tracks with other lines of railroad with which it may join or intersect; and all such spurs, extensions, side tracks, yard tracks, turnouts, switches and appurtenances as it has constructed or may hereafter construct to enable it to connect with warehouses, elevators, stock-yards, mills and manufacturing establishments along or near its route, as well as all real estate now owned or hereafter acquired, with all the tracks and improvements thereon which said Des Moines Union Railway Company now has or may hereafter find it necessary or proper to have in order to enable it to transact a general railway transfer business in and about the City of Des Moines, Iowa.

Together with all the rolling stock, machinery, tools, implements, fuel and materials of the party of the first part now owned or that may be hereafter acquired for construction, maintaining, operation, replacing, improving, or repairing the said road, and its appurtenances, or any part thereof, or in or for the business of said railroad, and all the real estate of said party of the first part wherever the same may be situated, now held or hereafter to be acquired.

Together with all the corporate rights, privileges and franchises of the said party of the first part, now possessed or that may be hereafter acquired, connected with or relating to the said railroad and the construction, maintenance, use and enjoyment of the same.

Together with all the streets, ways, passages, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of the hereby granted and mentioned premises and estates, appertaining or belonging thereto, with all the reversion, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property claim and demand of every nature and kind whatsoever of the said party of the first part now owned and possessed, or that may be hereafter acquired, as well at law as in equity, of, in and to the same, and every part and parcel thereof."

Your orators further show that the execution of said mortgage and issue of said bonds as aforesaid, was duly authorized and approved by the said proprietary railroad companies, and the same thereupon became and constitutes a first lien upon all the said terminal properties and facilities then held or thereafter acquired as provided in said mortgage. And your orators further show that the aforesaid bonds were issued to the amount of the cost of said terminal properties and improvements, and delivered to said proprietary companies to the amount of their respective portions of such cost, and said bonds have likewise from time to time been issued and delivered to other companies and persons in payment for moneys advanced for additional terminal properties and improvements, or sold, and the proceeds thereof applied in payment or reimbursement of such advances, all as contemplated and provided for in said contract of January 2nd, 1882, and the Articles of Association of said Trustee Company.

## VII.

Your orators further show that it was agreed between the said Trustee Company and the proprietary companies that in accordance with the said Articles of Association and contract of January 2nd, 1882, said last named companies should use such terminal properties, paying the operating expenses, taxes and interest on said bonds then or thereafter issued, after deducting all amounts received by said Trustee Company from other sources; and thereafter for the purpose of specifying in detail the conduct and operation of said properties, an agreement in the form of a lease was prepared at the instance of said Trustee Company, and executed by said Trustee Company and the then beneficial owners of said properties (the Des Moines and Northwestern Railway Company having in the meantime succeeded to all the rights, title and interest of the De

Moines Northwestern Railway Company), which agreement is substantially in the following form:

This agreement, made and entered into this 10th day of May, A. D. 1889, by and between the Des Moines Union Railway Company, of Des Moines, Iowa, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part, Witnesseth That

Whereas, the said party of the first part is the owner of valuable terminal facilities in the City of Des Moines, Iowa, as hereinafter described; and

Whereas, the respective parties of the second part have railroads in the State of Iowa, which terminate at, or run into and through the City of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party; and

Whereas, said party of the first part has become incorporated and organized under the laws of the State of Iowa for the purpose of owning and operating a line of railway in the said City of Des Moines, Iowa, extending from the eastern boundary line of said City to Farnham Street, in the western part thereof; and

Whereas, said party of the first part, in pursuance of said charter has acquired and now owns a railway in said City, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round-houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and

Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined.

Now Therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows:

Section One. The party of the first part agrees to proceed with reasonable dispatch, and whenever its board of directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said City of Des Moines, a union passenger depot and such additional switches, sidings, freight depots, round-houses, shops, water tanks, and yard appurtenances, as the board of directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase or otherwise such additional real estate as may be necessary.

Section Two. The amount of such additional grounds and the form, character and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement and repairs thereof, shall in all matters not otherwise specifically provided for herein, be determined by the board of directors of said first party.

Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay to said party of the first part a sum of money to be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round-houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expense of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round-house

transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month; and it is expressly understood and agreed that a computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard gauge cars; and that the term 'wheelage' as used in this contract means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

Section Five. If the amount, or any part of the amount, due from any other railroad company or companies for the use of said property or any part thereof, shall not be paid when due, then the sum so due and unpaid shall also, on demand of said first party, be paid to it by said second parties on a wheelage basis as hereinbefore defined.

Section Six. The party of the first part, in consideration of the payments to be made to it by said parties of the second part, hereby grants to said second parties the use of its terminal properties aforesaid, and said first party agrees to keep and maintain its said terminal properties in good condition and repair, and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such servants and employees as shall be reasonably necessary for the conduct of its business and the moving and handling of the cars, passenger and freight, of said second parties, and the housing and care of their engines. And said first party further agrees to switch all cars, handle all freight, house and care for all engines of said second parties which may be delivered to it or which may come upon its said premises, in so far as either of said second parties may request it so to do.

Section Seven. The party of the first part shall on or before the tenth day of each month, or as soon thereafter as practicable, make

up and present to each of the parties of the second part, an account showing the amount due thereunder for the preceding month, and payment thereof shall be made within five days thereafter.

Section Eight. So far as relates to the rental necessary to raise a fund for the payment of interest upon the mortgage bonds, this contract shall be retrospective and shall govern from and after the first day of May, 1888.

Section Nine. The cost and expense of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping, washing and firing up, shall be borne by each of said companies in such proportion as the number of road engines of each company in and out of said engine house shall bear to the whole number of road engines in and out of said engine house during the period for which said costs and expenses are made up. All repairs to engines shall be charged for and paid by each of said companies for whom the work is done on the basis of actual cost of labor and material, and all services rendered, supplies and labor furnished to any of the railroad companies, parties hereto, for their own benefit, and which are not properly a portion of the joint expenses, shall be charged directly to said company, on such equitable terms as may be agreed upon between the superintendent of the party of the first part and the superintendent of the party to whom the service is rendered.

Section Ten. It is further agreed between the party of the first part and each of the second parties hereto, that if any one of the parties of the second part shall, for any reason fail or refuse for a period of thirty days after the same has become due, and has been demanded, to pay the several sums under this contract as aforesaid, then the party of the first part may take from any moneys in its hands belonging to said defaulting party, or in the hands of its agents, the amount of said sums and apply a sufficient amount thereof to meet said demands. Should the sum in the hands of the party of the first part, or its agents, be insufficient to meet the amount due under this agreement and the same shall still remain unpaid, said first party shall have the right to exclude said delinquent party from said premises, and the party or parties so failing to pay shall forfeit all rights under this agreement and the first party may thereupon with the consent of the remaining parties of the second part, transfer and assign the rights of the party so failing to any other party or parties, for such sum as the Board of Directors of the first party may determine, and the same may be thereafter held and enjoyed



by such assignee or assignees. But it is understood and agreed that nothing herein shall prevent the party of the first part from enforcing its claims against any delinquent lessee or lessees, parties of the second part, by any proper action either at law or in equity, to recover the amount which may be at any time due and unpaid, in case said party of the first part shall so elect.

Section Eleven. The directors of the party of the first part hereto shall appoint an executive committee, of which each party of the second part shall have one member as its representative.

Section Twelve. The management of the depot grounds and terminal facilities, including station, buildings, tracks, round houses, shops, etc., shall be in charge of a superintendent who shall be appointed by the executive committee, subject to the approval of the board of directors. Said superintendent shall, in the performance of his duties, be governed by such regulations as may from time to time be established by said executive committee, or by the Board of Directors.

Section Thirteen. The salary of said superintendent shall be fixed by the executive committee, subject to the approval of the board, and the compensation of other agents and employes shall not be higher than is paid by railroad companies in the vicinity for similar services.

Section Fourteen. Said terminal properties shall be used by said railroad companies, parties of the second part, for all their passenger trains destined for or departing from said City of Des Moines, Iowa, and said second parties shall run all their trains to and from said depots and terminal properties, unless otherwise expressly permitted by said executive committee.

Section Fifteen. Said executive committee, subject to the board, shall make and publish and enforce such rules and regulations for the use, management and operation of said terminal station, depots, depot grounds, yards and tracks, by all the parties hereto, as it may from time to time consider necessary.

Section Sixteen. The said party of the first part shall at all times protect its depot buildings and improvements and furniture by adequate insurance against loss by fire, and the cost of such insurance shall be paid as herein provided for.

Section Seventeen. The party of the first part shall keep accurate books of accounts showing in detail all the expenditures made by it

on account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance and repairs, and other disbursements upon and about the premises, embraced in this agreement, and said books shall show the amount of work done for, and fuel or other material furnished to each party to this agreement, and the amount of fuel or other material received from each party hereto, and said books shall give such other details as will at all times enable the parties hereto to make accurate settlements of their accounts as provided in this agreement, and said books may at all reasonable and proper hours be examined and inspected by the superintendent, auditor or treasurer of said second parties, or by an authorized accountant.

Section Eighteen. The said party of the first part shall also keep an accurate record of all the engines and cars of each party hereto arriving at and departing from said terminal station, or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched onto or from said terminals for the benefit of the several parties hereto, or others; and of all the engines which have been housed at said engine houses in each month; and as heretofore provided, said first party shall furnish to the other parties hereto, a full, true and detailed statement of all the expenditures made, of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section Nineteen. All damages which may be received by any engine or engines, car or cars, of any party hereto, while being switched by said first party at or upon any part of the premises embraced in this agreement, shall be repaired by the party to whom such rolling stock belongs, and the cost of such repairs shall be borne and paid by each party hereto on a wheelage basis, as heretofore used.

Section Twenty. All damages to property other than as above described, caused by any engine or engines, car or cars, or either party hereto, or by any imperfection in the track or tracks laid on said premises, and all injuries which may at any time be received by any person or persons in, around, about or upon said terminal station, depot grounds, yards, etc., shall (if settled at all,) be adjusted and settled by said first party and the sums thus paid in settlement or settlements shall be borne and paid by each of the parties hereto.

upon said wheelage basis, as herein defined; provided, however, that each party hereto shall, at its own sole cost and expense, bear, settle and pay all damages to property belonging to itself or to third parties, and all injuries to persons, when said damages or injuries are done to or by its own trains, while said trains are being moved by its own engines and operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the servants of said first party, or by some imperfection in its track or tracks, and in case such damages or injuries are occasioned by the act, negligence or fault of the servants of said first party, or by an imperfection in its said tracks, then settlements and payments shall be made by said first party as in this section first provided.

Section Twenty-one. All persons employed and paid either permanently or temporarily by said first party in the maintenance and operation of said terminal station, depot grounds and yards, shall be deemed and taken to be the employees and servants of said first party.

Section Twenty-two. It is further agreed that the several covenants, conditions and stipulations herein contained shall be mutually binding upon the respective parties hereto, their successor, successors and assigns for the term of thirty years from May 1st, 1888, unless this contract shall be sooner determined by consent of the parties hereto, or by reason of the provisions hereof.

Section Twenty-three. It is further understood and agreed that all of the aforesaid covenants and agreements on the part of said parties of the second part to be performed, are several and not joint.

Section Twenty-four. It is understood and agreed that the Des Moines & St. Louis Railroad Company, as the owner of one-half of the capital stock of the Des Moines Union Railway Company, may sell and transfer one-half of said stock, or one-quarter of the whole to such railway company as may be acceptable to a majority of the parties of the second part; in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of the second part. Only as aforesaid, shall other railroad companies be admitted to the use of the property of said first party, without the consent of all the parties of the second part, and the compensation to be paid by any other railroad company, or person not a party hereto (or provided for as aforesaid), for the use of said depot or ter-

minal facilities, or any part thereof, shall be determined by the Board of Directors of said first party.

Section Twenty-five. It is further agreed by and between said first party and the several second parties hereto, that any of said second parties may sell, assign and transfer to any other one railroad company all its rights under this agreement, or said second parties, or any of them, may mortgage to any one party all their respective interests and rights under this contract; but none of said second parties shall subdivide, sublet, mortgage or assign to any other company, or person, a portion of its said rights and privileges herein and any assignment, mortgage or lease made by any one of said second parties, which may be held sufficient to admit its assignee, mortgagee or lessee, or their assigns, to the possession of any of said property, shall be held sufficient to exclude, and shall exclude, the party making such lease, mortgage or assignment from all its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as to prevent any of said second parties from contracting to do the business, or handle with its own engines the traffic or cars of any other railroad company to and from said city on such terms as said first party may approve, provided the line of such other railroad company connects with the line of such second party not less than twenty miles from said City of Des Moines.

Section Twenty-six. Whereas, the several parties hereto of the second part are entitled to the shares of the stock of said first party in the following amounts or proportions, to-wit: The Des Moines & St. Louis Railroad Company to one-half said shares; the Des Moines & Northwestern Railway Company to one-fourth said shares; and the St. Louis, Des Moines & Northern Railway Company to one-fourth said shares; and

Whereas, no certificate for said shares have as yet been issued to said parties;

Now therefore, it is hereby further agreed between the parties hereto, that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of one hundred dollars each, the same shall be issued and held as follows, to-wit: One certificate of ten thousand shares shall be issued and delivered to the Des Moines & St. Louis Railroad Company; one certificate for five thousand shares shall be issued and delivered to the St. Louis, Des Moines

& Northern Railway Company, and one certificate for five thousand shares shall be issued and delivered to the Des Moines & Northwestern Railway Company, and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement, except that any shares of stock issued on request of either of said companies to any person, to qualify him as a member of the Board of Directors shall be re-transferable to the company on whose request it shall have been issued without the consent of the other companies; but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued, unless consented to by the other parties of the second part.

Section Twenty-seven. Whereas, the parties of the second part have herein and hereby obligated themselves to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used, or to be hereafter issued and used by said first party in purchasing improving and equipping the terminal properties herein described;

Now therefore, in consideration of the premises, the said first party hereby contracts and agrees to and with each of the second parties hereto, that it will not at any time hereafter issue or dispose of any of said bonds, except for the purpose of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in said City of Des Moines.

Section Twenty-eight. In case any difference shall hereafter arise between the first and second parties hereto, concerning the management of said terminal station, depots, grounds yards and tracks, with respect to any matter not herein provided for, or concerning any other matter or thing, connected therewith, but not herein expressly provided for, such differences shall be referred to three competent men experienced in railroad management, who, shall, as soon as practicable after they are chosen, proceed to examine and determine what would be just and equitable for each of said parties to do in and about the matter in dispute. Each party shall choose one of said arbitrators and the two thus chosen shall select the third arbitrator and the decision in writing of a majority of said arbitrators with respect to the matter submitted, shall be furnished to and be thereafter binding upon each of the said parties; Provided, however, that such differences shall have no effect on the course of the business at said terminal station, depot grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, and such settlements and payments as are herein

provided for shall be made as before, until the matter in dispute shall be adjusted by the said arbitrators, and thereupon such payments or restitutions shall be made as may be required by the decision of said arbitrators.

In witness whereof, the respective parties hereto have caused their corporate seals to be hereunto affixed and these presents to be signed by their respective presidents, and attested by their secretaries respectively, the day and year first above written.

[SEAL.]

THE DES MOINES UNION RAILWAY  
COMPANY.

By G. M. DOIDGE,  
*President.*

Attest:

F. M. HUBBELL,  
*Secretary.*

[SEAL.]

THE DES MOINES & ST. LOUIS RAILROAD  
COMPANY.

By JAMES F. HOW,  
*President.*

Attest:

F. M. HUBBELL,  
*Secretary.*

[SEAL.]

THE ST. LOUIS, DES MOINES & NORTH-  
—ERN RAILWAY COMPANY.

By G. M. DOIDGE,  
*President.*

Attest:

J. T. GRANGER,  
*Secretary.*

[SEAL.]

THE DES MOINES & NORTHWESTERN  
RAILWAY COMPANY.

By F. M. HUBBELL,  
*President.*

Attest:

A. N. DENMAN,  
*Secretary.*

#### VIII.

Your orators further show that all the right, title, and interest of said Des Moines and St. Louis Railroad Company, and the Wabash, St. Louis & Pacific Railway Company, in and to the said terminal properties, and the use thereof, were acquired by and are now vested

in your orator, the Wabash Railroad Company, and all the right, title and interest of said Des Moines and Northwestern Railway Company, and St. Louis, Des Moines and Northern Railway Company in said terminal properties, were acquired by and became vested in the Des Moines, Northern and Western Railroad Company; and that thereafter on the 31st day of July, 1897, for the purpose of removing any doubts as to the rights and obligations of said successor companies with respect to the use and operation of said terminal properties, under the aforesaid operating lease or contract, an agreement was entered into between them and the said Des Moines Union Railway Company, which last named agreement is substantially as follows:

"This Agreement of ceditication and constitution entered into this 31st day of July, 1897, between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter called the Des Moines Company, the Wabash Railroad Company, a corporation organized and existing under the laws of the State of Missouri, and hereinafter called the Wabash Company, and the Des Moines, Northern & Western Company, Witnesseth, That

Whereas, on the 10th day of May, 1889, the said Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines and Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, entered into a certain contract, a copy of which, for complete identification, is hereto attached, marked Exhibit "A"; and

Whereas, the said Wabash Company is not named in said contract, and now operates the Des Moines & St. Louis Railroad; and

Whereas, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company have ceased to own or operate the respective railroads which were owned and operated by them at the time the said contract was made and the said Des Moines, Northern & Western Company has become the owner of and operates the lines of railroad which were formerly owned and operated by the said Des Moines & Northwestern Railway Company, and the said St. Louis, Des Moines & Northern Railway Company; and

Whereas, for a long time past both the Wabash Company and the Des Moines Northern & Western Company have been using the terminal property described in said contract, and all the parties have recognized the said contract as continuing and binding upon them; and

Whereas, it has been decided whether the said contract is legally binding upon the said Walack Company and the said Des Moines Northern & Western Company;

Now Therefore, in consideration of the premises, and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties heretofore named that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Walack Company and the said Des Moines Northern & Western Company.

And the said Walack Company for itself agrees to make the payments therein provided for at the times and in the manner prescribed for the said Des Moines & St. Louis Railroad Company, so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Walack Company ceases to operate the railroad of the said Des Moines & St. Louis Company, its obligation to so pay, and all the obligations herein assumed by it, shall at once determine and be and become the obligations of whatever company operates the said railroad, it being the intention that the obligations of the said contract, so far as they pertain to the Des Moines & St. Louis Railroad Company, shall attach to and become the obligations of the said Des Moines & St. Louis Railroad, and any company succeeding the Walack Company, in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property leased in the said contract, to assume all the obligations therein or hereby undertaken by either the said Des Moines & St. Louis Company or the said Walack Company.

And the said Des Moines Northern & Western Company for itself agrees to assume all the obligations of a lessor railroad and/or company as prescribed in the said contract for the entire term named therein, and as though it had been named in and was a party to the said contract when originally made, and to pay to the said Des Moines Company at the times and in the manner therein prescribed, the sum of money which may become due, computed according to the terms and provisions of the said contract with respect to a tenant company; and the said Des Moines Northern & Western Company further agrees that the obligations therein named and hereby assumed shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee, or successor of the said Des Moines Northern & Western Company in the ownership or operation of the said Des Moines Northern & Western Rail



road, and any company succeeding the Des Moines, Northern & Western Company in such ownership or operation, shal<sup>t</sup> be held by the operation of trains over the said Des Moines, Northern & Western Railroad, and upon the property leased in the said contract, to assume all the obligations therein expressed and herein undertaken by said Des Moines, Northern & Western Company.

But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as related to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:

The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.

The Des Moines, Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbard & Son, 2,500 shares.

Of the above shares belonging to said Purchasing Committee two shares stand upon the books of the Company as follows:

Joseph Ramsey, Jr., 1 share, and H. L. Magee, 1 share.

Of the shares belonging to the Des Moines, Northern & Western Railroad Company two shares stand upon the books of the Company as follows:

A. B. Commine, 1 share, and F. M. Hubbard, 1 share.

Of the shares belonging to said F. M. Hubbard & Son, five shares stand upon the books of the company as follows:

F. M. Hubbard, 1 share; F. C. Hubbard, 1 share; C. Hattenlocker, 1 share; H. D. Thompson, 1 share; A. M. Dorman, 1 share.

In Witness Whereof, the respective parties hereto have caused these presents to be signed by their respective presidents, and sealed

with their corporate seals, and attested by their respective secretaries, the day and year first above written.

[SEAL.] THE WABASH RAILROAD COMPANY,  
By O. D. ASHLEY,

Attest:

J. C. OTTESON,  
*Secretary.*

[SEAL.]

DES MOINES UNION RAILWAY COMPANY,  
By F. C. HUBBELL,  
*President.*

Attest:

By F. M. HUBBELL,  
*Secretary.*

[SEAL.]

DES MOINES NORTHERN & WESTERN  
RAILROAD COMPANY,  
By F. M. HUBBELL,  
*President.*

Attest:

A. N. DENMAN,  
*Secretary.*

And your orators further show that shortly after the making of the foregoing agreement, all the right, title and interest of said Des Moines, Northern & Western Railroad Company in said properties and their uses, was acquired by and are now vested in your orator, the Chicago, Milwaukee & St. Paul Railway Company, and it thereupon became a party to the said agreement in accordance with the terms thereof; and your orators are now respectively successors as aforesaid, and are entitled to all the rights, titles and interest, legal and equitable, of the said original proprietary companies, the Des Moines and St. Louis Railroad Company, the Des Moines, Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the Wabash, St. Louis and Pacific Company, in and to the terminal properties now held and controlled by said Trustee Company, the Des Moines Union Railway Company, and the use and operation thereof, together with all rentals and other revenues derived therefrom.

## IX.

Your orators further show that it was never intended the said Des Moines Union Railway Company should have any right, title or interest in or to any of such terminal properties, or in the management or operation thereof, except as Trustee for your orators, their predecessor companies, successors and assigns; that nothing was ever paid to or received by it for or on account of the shares of its capital stock, and it was never intended that anything should be paid upon the same, or that such shares of stock should have any value or be issued or held except as a means of keeping up the organization and management of said Trustee Company by the Companies beneficially interested in said properties; that it has no capital or assets, and that it was never intended such Trustee Company should have any capital, or acquire or own any assets or properties in its own right, or conduct any terminal or other business on its own account; but that said Trustee Company was organized and exists for the sole purpose of taking, holding and operating said terminal properties and facilities as Trustee for and at the cost and expense of the railroad companies beneficially interested therein, to the end that the handling and interchanging of traffic between the different railroads in the City of Des Moines might be accomplished at a minimum of cost and expense to shippers and consignees, as well as said companies.

Your orators further show that since the making of the operating lease or contract above set out, said Trustee Company, from time to time, performed certain switching services for other companies in and over said terminal properties, and granted to other companies and persons certain depot and other privileges, and the use of certain portions of its said real estate from which certain rentals and revenues have been received by it; that said Trustee Company, by its Board of Directors, on or about the 11th day of February, 1891, duly ordered that all such rentals and other revenues be credited upon the bills of the proprietary or tenant companies, giving each company its share of the same, ascertained on the basis of the wheelage of such company, which order remains in full force and effect except as modified or suspended by a resolution of said Board of Directors, adopted on or about the 7th day of January, 1892, to the effect that until the further action of said Board, supplies purchased and current bills coming in against said Trustee Company, before it received the monthly revenues from the tenant companies, should be paid from said receipts.

Your orators further show that the sum of \$25,000.00 was and is sufficient and ample amount to be reserved and used as a cash capital

for the aforesaid purposes; and that notwithstanding your orators were and are entitled to receive and have paid to them, or credited to them, on the basis of their respective wheelage over said terminal tracks, the said surplus earnings derived from the sources aforesaid, a large portion thereof, to-wit, upwards of the sum of One Hundred Thousand Dollars (\$100,000.00) has been expended by said Trustee Company wrongfully, and without authority from your orators, or either of them, in the purchase of additional properties; and in the making of additional improvements; and that notwithstanding such expenditures, there is now on hand and in the possession of said Trustee Company, surplus earnings derived as aforesaid, aggregating upwards of \$125,000.00.

And your orators further show that they have always insisted and repeatedly requested said Trustee Company to pay or credit the said surplus earnings to them as aforesaid, in accordance with the above named resolution, and that each of your orators, on the 12th day of March, 1906, made formal written demand upon said Trustee Company that said surplus earnings be credited on the bills against your orators respectively, on said wheelage basis; but that said Trustee Company then and there refused, and still refuses to pay or credit to your orators, or either of them, any part of said surplus earnings; that said Trustee Company has likewise refused to request the Trustee in said mortgage of November 1st, 1887, to certify and issue its remaining unissued bonds secured thereby, in accordance with Section 27 of the said contract of May 10th, 1889, and apply the same to the re-imbursement of your orators for the portions of said surplus earnings, temporarily applied to the purchase of additional terminal properties, and the making of additional improvements, and denies that your orators have any right to have any of said bonds issued or applied to the aforesaid purpose.

## X.

Your orators further show that notwithstanding the facts are as above set forth, said Trustee Company now denies that it holds or operates said terminal properties as Trustee or agent, and denies that your orators are entitled to the surplus earnings arising as above described, or to the benefit of the same, and on the contrary, claim through its officers and representatives that it is the owner of all said terminal properties in its own right, and entitled to receive and retain in its own right the surplus earnings aforesaid free from any right or claim upon the part of your orators, or either of them; that said Trustee Company threatens to appropriate said surplus earnings to its own and other unlawful uses, and has actually taken steps toward carrying out such unlawful purposes; that on the 12th day of March, A. D. 1906, at a meeting held by its Board of Directors in the said

City of Des Moines, additional salaries were voted to certain of its officers as follows:

To its President, for the years 1901, 1902, 1903, 1904, and 1905—\$37,500.00; and to its Secretary \$2,500.00 per annum and that said Trustee Company will, unless restrained by this Court, pay said unlawful appropriations from said surplus earnings, and will also appropriate and apply large amounts of said surplus earnings to the unauthorized purchase of additional properties, and the making of improvements; all of which claims, acts and doings on the part of said Trustee Company are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises.

## XI.

Forasmuch as your orators can have no adequate relief in the premises except in this Court, in equity, where such matters are properly cognizable, your orators therefore pray.

First. That said defendant, the Des Moines Union Railway Company be required to render to your orators a full and true account of all moneys earned and received by it for switching services, real estate rentals, and from other sources hereinabove mentioned, giving the dates, sources from which derived, amounts, portions of said receipts expended, the purposes and dates of such expenditures, and the balance now on hand, together with a full and true statement and description of all properties acquired, and improvements made and paid for from such earnings.

Second. That all the said earnings or receipts in the hands of said defendant be paid over to your orators on the basis of their respective wheelage, or credited on said basis upon the monthly bills of said defendant against your orators, for the maintenance, repair and operation and other charges pertaining to the maintenance and operation of said properties.

Third. That all the properties acquired, and improvements made by said defendant company from said earnings or receipts, bonds or other means, be declared to belong to your orators, and to be held in trust for your orators by the defendant, under and in pursuance of said contract of January 2nd, 1882, and the Articles of Incorporation of said defendant company.

Fourth. That the defendant be required to render to the Court a full and detailed statement of all properties, real, personal and mixed, acquired or held by it, with full and accurate descriptions of same, and the cost thereof, and that it be decreed to be the holder of the legal title to all the properties held by it, in trust, for the sole use and benefit of your orators, as successors in interest of the original proprietary companies hereinabove named, as and in accordance with said contract of January 2nd, 1882, and the express purpose of its organization, as set forth in its Articles of Incorporation, and that the sole equitable and beneficial right, title and interest in and to all said properties, are in your orator.

Fifth. That the defendant be required to cause the trustee in said mortgage of November 1st, 1887, to certify and issue its remaining and unissued bonds secured thereby, in accordance with Section 27 of the said contract of May 10th, 1889, to such an amount as may be necessary, and apply the same to the reimbursement of your orators for the portions of said surplus earnings applied as aforesaid, to the purchase of additional terminal properties and the making of additional improvements.

Sixth. And that a provisional or preliminary injunction be issued, restraining the defendant, its officers, directors, agents and attorneys from appropriating to its or their own use, as additional salaries or otherwise, any of the earnings or properties held by it as aforesaid, or from expending any of the aforesaid surplus earnings, pending this case, or until the further order of this Court; and that your orators may have such further and different relief in the premises as justice and equity may require, and to the court shall seem meet.

Seventh. And may it please Your Honor to grant unto your orators not only the writ of injunction conformable to the prayer of this bill, but also a subpoena of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the defendant, the Des Moines Union Railway Company, therein and thereby commanding it, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer (but not under oath, answer under oath being hereby expressly waived) all and singular the premises, and to stand to, perform and abide by, any order, direction and decree as may be made against it in the premises.

And your orators, as in duty bound, will ever pray, etc.

THE CHICAGO, MILWAUKEE &  
ST. PAUL RAILWAY COMPANY,  
By E. W. McKENNA,

*2d Vice-President.*

J. C. COOK,

*Solicitor for said Company.*

WABASH RAILROAD COMPANY,  
By E. B. PRYOR,

*4th Vice-President.*

CARR, HEWITT, PARKER &  
WRIGHT,

*Solicitors for Complainant.*

CHAS. E. VROMAN,  
C. N. TRAVOUS,  
*Of Counsel.*

UNITED STATES OF AMERICA,  
*Southern District of Iowa.*

STATE OF IOWA,  
*Polk County, ss:*

E. W. McKenna, being duly sworn, says that he is the Second Vice-President of the complainant, the Chicago, Milwaukee & St. Paul Railway Company, and familiar with said complainant's business relations with the defendant Des Moines Union Railway Company; that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true, of his own knowledge, so far as the same pertains to or concerns the complainant, the Chicago, Milwaukee & St. Paul Railway Company, except as to matters therein stated on information and belief, and as to those matters, he believes the same to be true.

E. W. McKENNA.

Subscribed and sworn to before me by said E. W. McKenna, this 18th day of January, A. D. 1907.

[NOTARIAL SEAL.]

THOS. J. GUTHERIE,

*Notary Public in and for the County and State aforesaid.*

UNITED STATES OF AMERICA,  
*Southern District of Iowa.*

STATE OF IOWA,  
*Polk County, ss:*

E. B. Pryor, being duly sworn, says that he is the Fourth Vice-President and Assistant Secretary of the complainant, the Wabash

Railroad Company, and familiar with said complainant's business relations with the defendant, the Des Moines Union Railway Company; that he has read the foregoing bill of complaint, and knows the contents thereof and that the same is true, of his own knowledge, so far as pertains to or concerns the complainant, the Wabash Railroad Company, except as to matters therein stated on information and belief, and as to those matters he believes the same to be true.

E. B. PRYOR.

Subscribed and sworn to by said E. B. Pryor, before me this 18th day of January, A. D., 1907.

[NOTARIAL SEAL.]

THOS. J. GUTHERIE,

*Notary Public in and for the County and State aforesaid.*

Endorsed: Filed February 5th, 1907. E. R. Mason, Clerk.

*(Subpoena in Chancery to Des Moines Union Ry. Co.)*

UNITED STATES OF AMERICA,

*Central Division,*

*Southern District of Iowa:*

The President of the United States to Des Moines Union Railway Company:

We command you, and each of you, that you appear before the Judge of the Circuit Court of the United States for the Southern District of Iowa, at Des Moines on the 4th day of March A. D. 1907 to answer to the bill of complaint of Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company this day filed in the office of the clerk of said Court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the said Southern District of Iowa:

Returnable twenty days from the date hereof, to-wit, on the 4th day of March A. D. 1907.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, Southern District of Iowa, at the city of Des Moines Iowa, this the 5th day of February A. D. 1907, and of the Independence of the United States the 131st.

[SEAL.]

EDWARD R. MASON,

*Clerk U. S. District Court, Southern District of Iowa.*

By ROMA WOODS,

*Deputy.*



Memorandum.—The within named defendant is notified that unless it file an answer or other defense in the Clerk's office of said Court on or before the twentieth day after service hereof, the complaint will be taken against it as confessed, and a decree entered thereon accordingly.

[SEAL.]

EDWARD R. MASON,

*Clerk U. S. District Court, Southern District of Iowa.*

By ROMA WOODS,

*Deputy.*

This writ came into my hands for service on [on] the fifth day of February 1907 and I served the same on the within named persons as follows, to-wit:

On Des Moines Union Ry. Co. on the 6th day of Feby. 1907, by delivering to F. C. Hubbell, President, a true copy of this writ at Des Moines, Ia.

On.....on the.....day of.....191..  
by delivering to him a true copy of this writ at.....

On.....on the.....day of.....191..  
by delivering to him a true copy of this writ at.....

On.....on the.....day of.....191..  
by delivering to.....at the dwelling house  
or usual place of abode of the said.....in  
.....the said.....being an  
adult person, and a member or resident in the family of the said  
.....

On.....on the.....day of.....191..  
by delivering to.....at the dwelling house  
or usual place of abode of the said.....in  
.....the said.....being an  
adult person, and a member or resident in the family of the said  
.....

Marshal's Fees:

Mileage	1	Miles	@	.06	\$ .06
Service on	1		@	2.00	\$2.00
					<hr/> 2.06

GEO. M. CHRISTIAN,

*U. S. Marshal.*

H. D. HEDRICK,

*Deputy.*

Endorsed: Filed in the District Court on Feby. 6, 1907.

*(Answer of Defendant, Des Moines Union Ry. Co.)*

Filed May 6, 1907.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of Iowa, Central Division:

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

First. This defendant admits that the Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company are railroad [corporation-] as alleged in the said bill, and that the Chicago, Milwaukee & St. Paul Railway Company is a citizen of the state of Wisconsin and that the Wabash Railroad Company is a citizen of the state of Ohio, and that this defendant is a corporation as alleged and is a citizen of the state of Iowa.

This defendant admits that on and prior to the second day of January, 1882, the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company were respectively engaged in the operation of separate and independent lines of railroad within the state of Iowa, and admits that the railroad of the first named company extended from Albia to Des Moines, and that the railroad of the last named company extended from Boone to the city of Des Moines.

Second. This defendant denies each and every allegation in the complainants' bill of complaint contained not elsewhere in this answer admitted or denied.

Third. This defendant admits the execution of the contract dated January 2, 1882, set out in paragraph two of the bill of complaint and admits the adoption of the resolution set out in paragraph three of the bill of complaint, and that under the articles of incorporation which form a part of that resolution the organization of this defendant was duly consummated as a corporation created under the laws of Iowa.

Fourth. This defendant admits that all of the property referred to in said agreement of January 2, 1882, was assigned, transferred and conveyed to it by the various persons who had theretofore held the title to the same under the said agreement of January 2, 1882, but denies that such transfer was made to this defendant as trustee. It on the contrary avers that the said property was so assigned, transferred and conveyed to this defendant, to be held by this defendant in its own right, as the absolute and unqualified owner thereof, and that said property was so transferred, assigned and conveyed to this defendant under and pursuant to agreements made by this defendant for the purchase of the said property, for a valuable consideration which was paid by this defendant.

Fifth. This defendant admits that it executed a trust deed to the Central Trust Company of New York, as trustee, dated November 1, 1887, and that the property covered by the said trust deed is, in said trust deed, described as alleged in paragraph six of the said bill and that the said trust deed was to secure an authorized issue of eight hundred (800) bonds, of the denomination of one thousand dollars (\$1,000.00) each, and that the said trust deed became and constituted and is a lien on the terminal properties of this defendant.

This defendant avers that the said trust deed recited, among other things, the organization of this defendant as a corporation; that this defendant had undertaken and partially completed the construction of its terminal railway; that it had purchased and owned certain property, meaning the property described in the said trust deed, and including the property referred to in the said contract of January 2, 1882; and that the issue of the bonds in question was for the purpose of paying for this property, building and extending its railroad, and making necessary and desirable improvements thereto and thereon.

And this defendant avers that a portion of the bonds issued under and secured by the said trust deed were delivered to and accepted as partial payment of the purchase price therefor, by the grantors in the various conveyances referred to in the complainants' bill, and in the preceding paragraph of this answer, by which the property in controversy was conveyed to this defendant; and that the said bonds are still outstanding as the obligations of this defendant, and are held by such grantors or their assigns.

And this defendant admits that from time to time other and additional bonds have been issued and that the proceeds of the said additional bonds have been used, either in payment for property acquired by this defendant, or in additions to and extensions and improvements of the property of this defendant.

This defendant avers that the said trust deed was executed for the purposes recited in it, that the said bonds and the proceeds thereof were devoted to the purposes aforesaid, in accordance with the unanimous vote of all of the stockholders and directors of this defendant and with the knowledge and concurrence of all of the parties to the said original agreement of January 2, 1882.

Sixth. This defendant admits that on or about the 10th day of May, 1889, the lease set out in paragraph seven of complainants' bill was fully entered into by this defendant and the other parties thereto; and avers that at the time of the making of the said lease this defendant was the owner of the property in question and that the fact of this defendant's ownership thereof was recited in and recognized by the said lease; and avers further that the other parties thereto and their successors had not on the 10th day of May, 1889, and have not since that time had any other right, title or interest in or to the property in controversy in this suit than the rights obtained and held by them under the said agreement.

And this defendant further avers that ever since the 10th day of May, 1889, the said agreement of that date, as amended by the supplemental agreement of date July 31, 1897, has been recognized by this defendant and by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and by the successors of the last named companies, including the complainants, as in full force and effect, and that the complainants are now using the property of this defendant in common with its other tenants by virtue of the right so to do claimed by them under the said agreement, and that the complainants are estopped to deny this defendant's title to the property in controversy.

Seventh. Further answering, this defendant respectfully shows to the court that on or about the 8th day of April, 1890, the stockholders of this defendant adopted amended articles of incorporation, a copy of which amended articles of incorporation is herewith attached and made a part hereof, marked exhibit "A," and that the said articles of incorporation were adopted by the unanimous vote of all of the stockholders of this defendant, including the stockholders to whose rights the complainants claim to have succeeded; and avers further that among the stockholders so voting in favor of the adoption of the said amended articles of incorporation were all of the persons then interested as parties of the second part in the said contract of January 2, 1882, and of May 10, 1899, which is set out in paragraph seven of the complainants' bill.

That among other things, it is provided in the said amended articles of incorporation by article XV thereof, as follows:

The proceedings of a meeting held December 10th, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged.

That the meeting of December 10, 1884, referred to in the said article XV, is the meeting at which the resolution referred to in paragraph three in complainant's bill was adopted, and that the contract of January 2, 1882, referred to in the said article XV is the said contract of January 2, 1882, set out in paragraph two of the complainants' bill.

That by the adoption of the said amended articles of incorporation, and especially by the adoption of article XV thereof, the said contract of January 2, 1882, and the proceedings at the said meeting of January 10, 1884, were formally repealed, stricken out and expunged by the unanimous action of all the parties in interest.

Eighth. This defendant admits that the agreement set out in paragraph eight of the complainants' bill, and dated the 31st day of July, 1897, was entered into by the parties thereto, but avers that the copy of the same set out in the bill contains some manifest inaccuracies, especially in the matter of names.

This defendant avers that the purpose of the said contract was to recognize the complainant, the Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company as the successors to the rights and obligations of the parties of the second part as lessees under the said agreement of May 10th, 1889, and to recognize this defendant as the owner of the property in question, and to make certain modifications of the existing contracts between the parties, especially as to the ownership of the capital stock of the defendant; and that it was the further express purpose of the said contract to confirm in the persons then holding the same and named in the said agreement of July 1st, 1897, their individual ownership of the capital stock of the defendant and to recognize and confirm their right to so own and hold the same.

This defendant further avers that on or about the 15th day of March, 1894, the complainant, the Chicago, Milwaukee & St. Paul Railway Company, became the owner of a portion of the capital stock of the Des Moines Northern & Western Railroad Company and that thereafter and on or about the . . . . day of . . . . ., 1900, it acquired the property of the said Des Moines, Northern & Western Railroad Company, including the one thousand (1000) shares of stock in this defendant, theretofore owned by that company, and succeeded to the rights of the Des Moines & Western Railroad Company under the lease of date May 10, 1889, and the said agreement supplemental thereto of July 31, 1897; and avers that the only interest of the complainants or either of them in the defendant company is as stockholders therein, and as tenants under the said agreement of lease, and denies that the complainants or either of them have any other right, title or interest in or to the property of this defendant or any part or portion thereof.

Ninth: This defendant denies that it was intended that it should take title to the property in controversy as trustee for the complainants; and avers that it was intended that it should, and that it did in fact, take title to the said property in fee, absolutely, for its own use and benefit; and specifically denies that nothing was ever paid on account of the shares of its capital stock; and denies that it was intended that nothing should be paid for the same; and denies that the intention was that such shares should have no value, or that they should be issued for the purposes alleged in paragraph nine of the bill, or that they were so issued; and denies the averment that it has no capital or assets and the averment that it was never intended that this defendant should have any capital or acquire or own any property or assets in its own right or conduct any terminal or other business on its own account; and denies that this defendant was organized or that it exists for the purpose stated in said paragraph nine.

On the contrary, this defendant avers that as set out by article II of its amended articles of incorporation, the business and purposes for which it was organized are as follows:

The objects of the corporation and the general nature of the business to be transacted shall be, the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock

yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators, or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines; and also to lease terminal facilities to, and furnish and perform terminal service for all railways those lines reach or pass through or near the said City of Des Moines; and the corporation shall possess all the powers conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

Defendant further avers that by article III of the said amended articles of incorporation it is expressly provided as to its capital stock as follows:

The capital stock of the corporation shall be two million dollars (\$2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, constituted the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions. Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successors in ownership to the Des Moines & St. Louis Railroad Company the present owner of the property known as the Des Moines & St. Louis Railroad, one thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines North Western Railway Company, and one thousand shares to the Des Moines & Northern Railway Company, successors to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, sixteen thousand shares or any part thereof shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered.

The stock shall be transferable only upon the books of the Company, by, and with the consent of three-fourths of all the Directors, except in the case the [transferee] of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

And this defendant further avers that it has at all times been recognized by the complainants as the absolute owner of the property in question, and that it has made large expenditures in connection with said property in reliance upon its ownership thereof; and that its capital stock has at all times been recognized by the complainants, and their assignors, as fully paid stock, issued to evidence the interests of its owners in the management, profits and ultimate assets of this defendant, and has been bought and sold by the complainants and their assignors as property of value.

That by virtue of the premises, the complainants are now estopped from setting up that this defendant does not own the property in question and from setting up that the said property is held in trust for their benefit and from setting up that this defendant's stock is not of value, or does not represent the ownership of the corporation; and that by reason of their laches and long acquiescence and delay the complainants cannot now be heard to assert or set up the said matters or either of them.

Tenth. This defendant admits that since the making of the said lease of date May 10th, 1889, it has derived revenue from switching and other terminal services performed by it, and from depot and other privileges furnished by it, and from rentals of portions of its real estate.

That for a long series of years and until on or about the 12th day of March, A. D. 1906, the surplus earnings of this defendant of the character above indicated were continuously applied by it to the purchase of permanent additions to and improvements of its plant and property, and to the acquisition of additional property and extensions of its tracks, and to like purposes, and that the said application of the said funds so made with the full acknowledge, acquiescence and approval of each and every of the officers, directors and stockholders of this defendant, including complainants, and their [assignors]; and that during the said period this defendant asserted that under the proper construction of the said lease it was entitled to the said earnings and the tenants thereunder acquiesced and concurred in such construction of the said lease of date May 10th, 1889, and the contract supplemental thereto, and such was the practical construction thereof placed upon it and adopted by the parties thereto. That on or about the 12th day of March, 1906, the complainants asserted



that under and by virtue of the terms of the said agreements last above referred to they were entitled to have the said surplus earnings [credited] upon the rentals paid by them under the said lease, which construction of the said contracts this defendant denied; but that since that time and pending the determination of the said question it has held the said surplus earnings in a separate fund and has not expended them.

And this defendant denies that the said complainants have the right to have said earnings credited upon the rentals payable by them under the said contracts; and denies that they have any interest in said earnings.

This defendant admits that it has refused to request the trustee under its said mortgage of November 1, 1887, to certify and issue the additional bonds authorized by the said mortgage, or when issued to use the said bonds to reimburse the complainants for the portions of the said surplus earnings used in the purchase of additional terminal properties and the making of additional improvements; and denies that the complainants are entitled to such reimbursement and denies that the complainants are entitled to have said bonds so certified, issued and delivered to them.

Eleventh. This defendant admits that it now denies, and avers that it has at all times denied, that it holds or operates said properties as trustee or agent; and admits that it now denies, and avers that it at all times has denied, that the complainants are entitled to the said surplus earnings or to the benefit of the same; and admits that it now claims, and asserts that it has at all times claimed, that it is the owner of all of the said terminal properties in its own right, and entitled to receive and retain in its own right the surplus earnings aforesaid free from any claim or right on the part of the complainants or either of them; and admits that it proposes to appropriate the said surplus earnings to its own uses for lawful purposes if it shall be held that it has the right so to do.

Twelfth. This defendant avers that for many years prior to on or about March 10th, 1906, the then president and secretary of this defendant had had general charge of and had conducted and managed the business of this defendant, including not only the operation of the property but also the acquisition of additional property and the building up and development of the property as a terminal railroad. That during said period the said officers had been largely interested in the defendant through its capital stock, and that no formal arrangement had ever been made fixing the amount of compensation to be paid to them for their services.

That shortly prior to March 10th, 1906, the complainants having asserted that they claimed to be the beneficial owners of the property in question, the said officers deemed it proper and expedient that the amount of the compensation to which they were entitled should be fixed and that thereupon and on or about the 12th day of March, 1906, there was presented to a meeting of the board of directors of the defendant a resolution to the effect that for each of the years 1901, 1902, 1903, 1904, and 1905, the salary of the president of the defendant be fixed at seven thousand five hundred dollars (\$7,500.00), and a further resolution to the effect that the salary of the secretary be fixed at two thousand five hundred dollars (\$2,500.00) per annum. That each of the said motions received five (5) affirmative votes and three (3) negative votes, which negative votes were cast by three of the said directors, who were also at the time officers of the complainants.

That the said officers of this defendant are entitled to compensation for the services so rendered by them, but because of the said opposition thereto this defendant has not up to this time either made, or threatened to make, any payments under the resolutions above referred to, or either of them.

Thirteenth. This defendant further answering, respectfully shows to the court, that it is and for more than ten (10) years last past has been in the open, adverse, notorious and continuous possession of all of the property in controversy in this action, under a claim of right and under the claim that it was the absolute and unqualified owner thereof, and under the claim that neither of the complainants nor the persons to whom they were successors, had any right, title or interest in or to the said property or any part thereof; and that the complainants have been guilty of laches; and that any rights that they might have had in the said property are now barred by the statute of limitations.

Fourteenth. This defendant further respectfully shows to the court that from the time when, as mentioned in paragraph fourth of this answer, it commenced the acquisition of its terminal property in the city of Des Moines, until shortly prior to the beginning of this suit, it was continuously recognized by all of the parties to the said agreement of January 2, 1882, and by all of the parties of the second part to the said agreement of May 10th, 1889, and by all of the parties to the said supplemental agreement of July 31, 1897, and by each and all of the successors of said parties, and by each and all of its stockholders, as the absolute owner of all of the property so acquired by it and of all additions thereto and extensions and improvements thereof, which have from time to time been

acquired or made by this defendant; and that this defendant has with the knowledge and acquiescence of all of the said persons continued throughout a long period of years to make many and valuable additions to, and extensions and improvements of, said property, and has made leases of said property or parts thereof to other persons, all with the knowledge and acquiescence of the persons above mentioned and each of them, and in reliance upon this defendant's ownership of said property; and that during said entire term, the said persons, including the complainants, until shortly before the bringing of this suit, acquiesced in and recognized this defendant's ownership of the said property.

That by reason thereof the complainants cannot, at this time, be heard to assert the claims set up by them in their bill, and are barred by their laches and are estopped from so doing.

And this defendant having fully answered prays to be dismissed with its costs in this behalf most wrongfully sustained.

DES MOINES UNION RAILWAY COMPANY,  
By F. C. HUBBELL,  
*President.*

N. T. GUERNSEY,  
*Solicitor for Defendant.*

## EXHIBIT "A."

*Articles of Incorporation of the Des Moines Union Railway Co. as Amended.*

## Article I.

The name of the corporation shall be the "Des Moines Union Railway Company" and its principal place of transacting business shall be at Des Moines, in the County of Polk and State of Iowa.

## Article II.

The objects of the corporation and the general nature of the business to be transacted shall be, the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators, or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines; and also to lease terminal facilities to, and furnish and perform terminal service for all railways whose lines reach or pass through or near the said City of Des Moines; and the corporation shall possess all the powers conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

## Article III.

The capital stock of the corporation shall be two million dollars (\$2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the

corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, constituted the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions: Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company and the present owner of the property known as the Des Moines & St. Louis Railroad, one thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines North Western Railway Company, and one thousand shares to the Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, [sixteen] thousand shares or any part thereof shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered.

The stock shall be transferable only upon the books of the Company by, and with the consent of three-fourths of all the Directors, except in the case the transferee of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

#### Article IV.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons who shall be elected by the stockholders at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday in January of each year, and they shall hold their offices for one year and until their successors are elected and qualified; but at all future elections of Directors, it shall require the votes of more than seven-eighths of all the stock theretofore issued, to elect any Director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases to authorize the institution of condemnation proceedings, and to do all such

other things as may be proper or necessary for the corporation to do; but with respect to the matters above mentioned and all other matters except the ordinary operations of the property, the Board of Directors can act only upon the unanimous vote of the eight members thereof and in order to facilitate the transaction of business, power is expressly conferred upon each of the Directors to delegate by written authority, some other person to act or vote for him and in his stead; Provided that such authority shall be filed with the Secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an executive committee, but such selection must be made by the vote of at least seven members.

The duties and powers of such committee shall be defined in the by-laws.

The Board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must be elected and such by-laws enacted by the [unanimous] vote of the eight members of the Board. All vacancies occurring in the Board shall be filled by the stockholders at a special meeting in the manner heretofore provided for the election of Directors.

#### Article V.

The officers of the corporation shall be a President, Vice-President, Secretary and Treasurer (the offices of Secretary and Treasurer may be filled by one person) to be annually elected from the persons composing the Board of Directors as hereinbefore provided, and for that purpose, among others, the newly elected Board shall convene immediately after the adjournment of the annual meeting of the stockholders. Said officers shall hold their offices for one year and until their successors are elected and qualified; and they shall exercise such power and be charged with such duties as usually pertain to their respective offices, subject, however, to the limitations herein contained.

#### Article VI.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

#### Article VII.

The highest amount of indebtedness to which the corporation may at any time subject itself, shall be the amount authorized by law.

## Article VIII.

Meetings of the Board of Directors may be called by the President, or in case of his absence or disability, by the Vice-President and shall be called upon request preferred in writing, by two members of the Board.

## Article IX.

These Articles may be amended by a vote of more than seven-eighths of all the stock in favor thereof, at a meeting of the stockholders thereof, of which a notice containing the proposed amendment shall be mailed to each stockholder at his address as disclosed by the transfer books of the Company.

## Article X.

This Corporation shall commence on the fifth day of December, A. D. 1884, and continue fifty years, with the right of renewal.

## Article XI.

Special meetings of the stockholders may be called by the President or by four Directors; but at least ten days' notice of such meeting shall be given to each stockholder by mailing to its or his address as shown by the books of the Company a notice stating the time and place of such meeting.

## — XII.

At all meetings of stockholders, each stockholder shall be entitled to [*cast*] one vote for each share of stock owned by him or it, as may appear from the books of the Company, such vote may be cast either in person or by proxy, but if by proxy, written authority therefor must be filed with the Secretary at or before the time the meeting convenes.

## Article XIII.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized, that all its authorized capital stock be subscribed or taken.

## Article XIV.

The purchase of the property heretofore conveyed to the corporation, the conveyances made in pursuance thereof, the execution of Trust Mortgage to the Central Trust Company of New York, dated February 28th, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 196, at page 525, and the issuance of bonds secured by the same are hereby approved, ratified and confirmed.

## Article XV.

The proceedings of a meeting held December 10th, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged.

Endorsed: Filed May 6th 1907 E. R. Mason, Clerk.



In the Circuit Court of the United States for the Southern District  
of Iowa, Central Division.

No. 2449. In Equity.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY and  
THE WABASH RAILROAD COMPANY, Complainants,

VS.

THE DES MOINES UNION RAILWAY COMPANY, Frederick M. Huddell,  
Frederick C. Huddell and F. M. Huddell & Son, Defendants.

Amended Bill of Complaint as Amended.

J. C. Cook, Wells H. Blodgett, J. L. Minnis, Hewitt and Wright,  
Solicitors for Complainants.



In the Circuit Court of the United States, in and for the  
Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company, and  
The Wabash Railroad Company, Complainants.

No. 2449. vs. In Equity.

The Des Moines Union Railway Company, Frederick M. Hub-  
bell, Frederick C. Hubbell and F. M. Hubbell & Son,  
Defendants.

Amended Bill of Complaint  
As Amended.

The Chicago, Milwaukee & St. Paul Railway Company, a  
railroad corporation created by and under the laws of the  
State of Wisconsin, a citizen of said State, having its principal  
offices in the City of Milwaukee, State of Wisconsin, and  
in the City of Chicago, State of Illinois, and the Wabash Rail-  
road Company, a consolidated railroad corporation organized  
under the laws of the States of Ohio, Indiana, Illinois, Michi-  
gan and Missouri, first created under the laws of the State of  
Ohio, and a citizen of said State, having its principal office  
in the City of St. Louis, State of Missouri, bring this, their  
Amended Bill of Complaint against the Des Moines Union  
Railway Company, a corporation created by and under the  
laws of the State of Iowa, having its principal office in the  
City of Des Moines, in said last named State, and a citizen  
of said State of Iowa, and Frederick M. Hubbell, a citizen of  
the State of Iowa, and a resident of the City of Des Moines,  
in Polk County, in said District and Division, and Frederick  
C. Hubbell, also a citizen of the State of Iowa and a resident  
of said City of Des Moines, in Polk County, Iowa, which is in  
said District and Division, and the firm of F. M. Hubbell &  
Son, which is composed of the said Frederick M. Hubbell and  
Frederick C. Hubbell, defendants.

1.

And thereupon your orators complain and say that on or  
about December 15th, A. D. 1880, the said defendant Fred-  
erick M. Hubbell, and three other residents of the City of Des  
Moines, Polk County, Iowa, to-wit: J. S. Polk, John S. Run-  
nells, and J. S. Clarkson, all of whom were largely interested  
as property owners in said City, entered into an agreement  
in writing with the Wabash, St. Louis & Pacific Railway Com-  
pany (hereinafter called Original Wabash Company), which  
latter Company was then engaged in operating a large sys-

tem of railroads in Iowa and other States, and under which agreement the said defendant Frederick M. Hubbell and his associates were to organize a corporation for the building of a railroad from the City of Des Moines to a connection with the said system of railroads at Albia in the interest of the said Original Wabash Company, and it was further agreed in said contract that the said Frederick M. Hubbell and his associates were personally to receive a large sum of money from the said Original Wabash Company for procuring the right of way, and for otherwise promoting the building of said railroad, and the funds for such building, including the compensation to the said Hubbell and his associates were all to be furnished by said Original Wabash Company.

That pursuant to said contract, the said Hubbell and his associates organized a corporation under the laws of the State of Iowa, to be known as the "Des Moines & St. Louis Railroad Company," which corporation will be hereafter called the "St. Louis Company," for the purpose of building the said connecting link or line of railroad from the Town of Albia in Monroe County, Iowa, to the City of Des Moines in Polk County, Iowa; and thereupon the work of procuring right of way, and constructing the said railroad was actively begun and carried on, in the name of said St. Louis Company; the said Hubbell and his three associates being the directors, executive officers and managers thereof, but the Original Wabash Company furnishing all the money for the same, and for which money it received all the capital stock of the said St. Louis Company, in the name of James F. How, Trustee, he being also vice-president of said Original Wabash Company.

## 2.

That about the same time the defendant Frederick M. Hubbell and one J. S. Polk, his partner in business also under and through an Iowa corporation known as the Des Moines Northwestern Railway Company (hereinafter called the Northwestern Company), promoted the building of a line of railroad from a connection with the Des Moines & Ft. Dodge Railroad to the Town of Waukee about fifteen miles west of the City of Des Moines, and extending thence in a northwesterly direction toward Spirit Lake in Northwestern Iowa.

That on or about the first of the year 1881, said Northwestern Company leased its line of railroad, then being built, to the Original Wabash Company, and the said last named Company at a large expense financed said project and extended said line from Panora to Lohrville, a distance of forty-three and one-half miles. And said Original Wabash Company also leased the line of the St. Louis Company and com-

pleted that line from Albia into the City of Des Moines and thereafter for some time said original Wabash Company operated both said lines through Des Moines.

## 3.

And your orators further represent and show to the Court that on or about April 4th, A. D. 1881, the said Hubbell, Clarkson, Runnells, and Polk, organized a corporation to be known as the "St. Louis, Des Moines & Northern Railway Company" (hereinafter called the Northern Company), for the purpose of building a line of railroad from a connection with the line of the St. Louis Company in the City of Des Moines, northerly to the City of Boone, Iowa. That one Grenville M. Dodge, became connected with said last named corporation and to a large extent financed the same and furnished the larger share of the cost of constructing said line of railroad.

That about the month of December, A. D. 1881, the last mentioned road was completed from a connection with the line of the St. Louis Company in the City of Des Moines, westward through Clive, a station about seven and four-tenths miles west of Des Moines Station, and to a connection with said line of the Northwestern Company at Waukee, and soon thereafter sold and granted the undivided one-half interest in its said road between Des Moines and Clive and its entire interest in the line between Clive and Waukee to said Northwestern Company, so that from then on both said roads had an entrance into Des Moines by reason of their connection with the tracks and terminal yard of the St. Louis Company. In the meantime said Northern Company also completed its line from Clive to Boone.

## 4.

Your orators further aver and show that the said three corporations, to-wit, the St. Louis Company, the Northern Company, and the Northwestern Company, on or about the date last aforesaid, determined that it would be to their mutual advantage, as well as beneficial to the public, for them to acquire, construct and operate, terminal facilities in the City of Des Moines, for their common use and benefit; and for that purpose the St. Louis Company had, with funds provided by said Original Wabash Company, purchased, in said City, real estate at a cost of about \$380,000, and had the same conveyed to one James F. How, its Vice-President, to be held by him for the time being, in trust for said terminal purposes and uses. That the Northern Company had also purchased in said City real estate at a cost of about \$74,000, and had the same conveyed to said Grenville M. Dodge, to be held by him, for the time being, in trust for said terminal purposes and uses. That

the Northwestern Company had also acquired real estate and right of way in said City, and constructed tracks and improvements thereon, at a cost of about \$3,000, all of which said real estate said Company had already appropriated to the joint and common use of all of said railroad companies, and as a part of said joint terminal facilities. And your orators further state, that thereupon, said three railroad companies, in pursuance of their said plan, entered upon the common use of the terminal properties so acquired and held for them as aforesaid, in said City, and began the improving thereof by the construction of tracks and suitable buildings thereon at their joint expense.

That thereafter, on the second day of January, A. D. 1882, in the City of New York, the said St. Louis Company, the Northwestern Company, the Northern Company, and said James F. How and Grenville M. Dodge, (the persons then holding in trust said real estate so conveyed to them in execution of said purpose), in order to secure to said railroad companies, their successors and assigns, in perpetuity, the right to use in common said terminal facilities at the least possible expense to themselves, to shippers and the general public, made and entered into a contract in writing, reciting that said companies were then engaged in constructing the railroads above mentioned; that they had theretofore agreed upon the purchase, construction, maintenance and operation, at their joint expense, of terminal facilities in the said City of Des Moines, to be held and used by said companies, their successors and assigns, in common and in perpetuity, and for those purposes had purchased said real estate so conveyed to and held by said James F. How and Grenville M. Dodge in trust, as aforesaid; that additional property in said City of Des Moines had been appropriated by the Des Moines & St. Louis Company, for said terminal purposes, and that buildings and other terminal improvements were then being constructed on said real estate. That in said contract said individual parties, How and Dodge, declared that they held the real estate conveyed to them, as aforesaid, in trust, and agreed to convey, upon demand, said property to a trustee to be thereafter named by said railroad companies. That the expense incurred by the purchase and improvements theretofore made, and such other as might thereafter be made, should and would be borne in the proportion of one-half by the St. Louis Company, one-quarter by the Northern Company, and one-quarter by the Northwestern Company; and that a Depot Company might be organized to take permanent charge of the property upon the terms set forth in the aforesaid contract, and that such Depot Company, if organized, should deliver to the companies, parties to said contract, its mortgage bonds to the amount of their respective portions of

the cost of the said purchase and improvements. It was also agreed in and by said contract that the title to such property should be and remain in a Trustee to be named by agreement of said three companies, but that such title in said trustee should be granted to and held by such new trustee subject to the joint use and occupation of said three railroad companies upon the terms in said contract described; and it was also provided in said contract that said three railroad companies should have the right to so use said terminal facilities at a maximum cost to them of the expense of maintaining and operating the same, to be shared by them in accordance with their respective use thereof, as evidenced by the wheelage; that is to say, each was to pay the proportion of the total cost of maintaining and operating said terminal facilities that its wheelage over said facilities should bear to the total wheelage of said three companies; and said Original Wabash Company, the lessee of said St. Louis Railroad, and of said Northwestern Railroad, and the holder of their capital stock, assented to the execution of said contract, and as an evidence of said assent, its approval was indorsed thereon by its president. That a true copy of said contract is hereto attached, and made a part hereof, marked Exhibit "A".

And your orators represent and show to the Court that the legal effect, or the effect in law, of the said written contract and its execution, as aforesaid, was and is an express declaration in writing by the then holders of the legal title to the ground and property, How and Dodge, that they held the said ground and property, and the title to the same, in trust and was also an express agreement between the said How and Dodge, and the said Railroad Companies, that the trust should be executed and carried out in conformity with, and as provided in said written contract; and the execution of said contract by the said three railroad companies, was, in legal effect, and in law, the declaring and creating of a beneficial interest in the several lots or parcels of land then held in the name of How and Dodge, or in the names of either railroad company, or that might be thereafter acquired, to the extent of a right in common of said three railroad companies and their successors in interest, or in title to their respective railroads, to construct upon the said lots, lands or grounds so held, or thereafter to be acquired, railroad tracks, depots, station houses, ware-houses, and all other structures that might be useful to them in the way of railroad terminal facilities, and also the right to maintain, operate, and use the same for railroad purposes, in perpetuity, at a maximum expense of the cost of maintaining and operating said terminal facilities to be borne by each in proportion to its use thereof as aforesaid; and was also the creat-

ing of and granting to each of said three railroad companies, a perpetual easement in and upon said lots or parcels of land, such easement consisting of a grant to each of said three railroad companies and their assigns or successors in interest, or in title to their respective railroad lines, of the right in perpetuity to construct and maintain, upon or over said lots and parcels of land, for use by them in common, railroad tracks and railroad buildings, suitable for terminal railroad purposes, to the extent reasonably necessary in the business then existing or that might in the future arise upon the said three lines of railroad, or on either of said lines of railroad; and gave to each of said three railroad companies the right to a use of said tracks, structures and facilities, jointly, or in common with the other two railroad companies and in connection with their several lines of railroad for such purposes, perpetually, at a maximum expense of the cost of maintaining and operating said terminal facilities to be borne by each in proportion to its use thereof as aforesaid.

That from and after the making of said contract (Exhibit "A"), the said yards, freight and passenger depots, and all the property referred to and embraced in said contract, and the privileges, franchises and easements acquired or held by either of said Companies between Farnham Street and the eastern boundary of the City of Des Moines, was, and were, maintained, operated and used in common by said three companies as their only railroad yards and passenger and freight depots, as well as for all switching, making up of trains and all station work at Des Moines, in strict and full accord with said written contract (Exhibit "A"), and the cost and expense thereof, including improvements and extensions, was apportioned among the three companies, as provided in said written contract; and this continued until the time hereinafter named.

5.

Your orators further represent and show to the Court that thereafter, in the way of carrying out said contract of January 2nd, A. D. 1882, and for the purpose of providing for the joint management and control of said terminal facilities and to carry out said contract, the Board of Directors of the Northwestern Company adopted the following resolution, to-wit:

"Whereas, heretofore, to-wit, on the 2nd day of January, 1882, the Des Moines & St. Louis Railroad Company, the Des Moines & North Western Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, Jas. F. How, and Jas. F. How, Trustee, entered into a contract whereby it was agreed to purchase and use certain Real Estate



and Franchises theretofore acquired by certain of said parties for terminal facilities in Des Moines, and

"Whereas, it is desirable that a corporation be organized for the purpose of taking and holding such property,

"Now Therefore, be it resolved, That J. S. Polk and F. M. Hubbell be and they are appointed to act for this Company in the organization of such corporation and they are selected to act as two of the directors of said proposed corporation so to be organized for the purpose of carrying out the objects of said contract of January 2nd, 1882."

That each of the other two railway companies took similar action, the result of which was, that on December 10th, 1884, certain individuals, as representatives of the said three railway companies (the defendant Frederick M. Hubbell, and J. S. Polk appearing for the said Northwestern Company, G. M. Dodge for the Northern Company, John S. Runnells and C. F. Meek for the St. Louis Company) assembled in organized meeting at the City of Des Moines, and after appointing a Chairman and Secretary, collectively declared their purpose, and the purposes of said meeting to be the organization of a corporation to "carry out the purposes of the agreement heretofore, to-wit, on the 2nd day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company, and others".

(meaning and referring to the contract set out in Exhibit "A" hereof), and adopted Articles of Incorporation as set out in full in Exhibit "B" hereto attached, and which exhibit is also made a part of this Bill.

That not only was the aforesaid resolution adopted at the outset by said meeting by said incorporators and promoters of the Des Moines Union Railway Company, but the said contract of January 2nd, 1882, was bodily and fully recited and set out in said Articles of Incorporation as a part of the charter of the said Des Moines Union Railway Company (hereinafter called the Terminal Company), and it was also declared in said Articles of Incorporation that the said Terminal Company was being organized by reason of and pursuant to said contract, and with intent and for the purpose of having it acquire title to said property and then to operate and maintain it "in such manner as best to serve the interests of the parties thereto," meaning the said three railroad companies parties to said contract of January 2, A. D. 1882.

And by way of still further making plain and to show the intent and purpose of the said Terminal Company to be as aforesaid, all the proceedings aforesaid had at the meeting of

said promoters and incorporators of the Terminal Company were spread upon and recorded in the records and minutes of the meetings and proceedings of stockholders and directors of the Terminal Company.

That Article I of said Articles provided, that the name of said corporation should be "The Des Moines Union Railway Company."

That Article II thereof provided that its business should be to construct, own, maintain and operate a railroad in and around and about the City of Des Moines, and depots and other terminal facilities in said City; that all the powers exercised by said Company should be limited to and exercised in accordance with the terms and spirit of said contract of January 2nd, 1882; that said Company should have the right to lease or otherwise dispose of the use of any part of its franchise to any other Railway Company, provided that the consent in writing of the St. Louis Company, the Northwestern Company and the Northern Company should be necessary before any such lease or disposition could be made to any other than the Companies last named.

That Article III thereof provided that the capital stock should be One Million Dollars (\$1,000,000), divided into shares of One Hundred Dollars (\$100.00) each, and should be paid in at such time and in such manner as the Board of Directors might determine, and that the Board of Directors might receive in payment therefor the property and franchises in the City of Des Moines then held by the three companies last named, and said James F. How, James F. How, Trustee, and Grenville M. Dodge.

That Article IV thereof provided that the affairs of the Company should be managed by a Board of Directors who should be elected annually by the stockholders on the first Thursday in January of each year, and the provisional board to hold office until the first Thursday in January, 1886, should consist of James F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, and C. F. Meek; that four members of the Board should be nominated by the Original Wabash Company, two members by the Northern Company, and two members by the Northwestern Company, and that no stockholder should be eligible for membership in the Board, unless so nominated, and that such nominations should be evidenced by a certificate to the Stockholders' meeting, signed by the respective Secretaries of the last named companies, and that the provision with respect to nominations for the Board of Directors, should be enjoyed by a grantee or assignee of either of the last named companies; that no contract, lease or other agreement amounting to a permanent

charge upon the property of the corporation should be entered into by the Board unless the same had been first approved by the three companies last named or their assigns, and had also been approved by more than three-fourths of all the stockholders voting therefor at a stockholders' meeting.

That Article V thereof provided that the officers of the Company should possess the powers and discharge the duties of like officers of similar corporations subject to the limitations imposed by said Articles and decreed that the following persons should hold the following offices until the first Thursday in January, 1886, to-wit:

President .....	G. M. Dodge
Vice President .....	Jas. F. How
Secretary and Treasurer .....	F. M. Hubbell.

That Articles VI, VII, VIII related to the liability of stockholders, the amount of indebtedness the Company might incur, and meetings of the Board of Directors.

Article IX thereof provided that by a vote of more than three-fourths of all the stock in favor thereof at a meeting of stockholders therefor, the Articles of Incorporation of the Terminal Company might be amended.

#### 6.

Your orators further show that in the year 1884, the Original Wabash Railway Company became insolvent and made default in the payment of interest due on all its mortgage bonds theretofore issued, whereupon the Central Trust Company of New York, trustee in what was known as the general mortgage covering all the property of said Original Wabash Company, and covering the payment of bonds that had been previously issued, to an amount exceeding eighteen million dollars, filed in the Circuit Court of the United States for the Eastern District of Missouri, its Bill of Complaint, wherein it prayed for the foreclosure of said mortgage and thereupon said Court appointed Receivers to take charge of and manage all said mortgaged railroad and property pending such foreclosure proceedings. That to protect the interests of the holders of said bonds, what was known as a Purchasing Committee was formed, consisting of Ossian D. Ashley, James F. Joy, Thomas H. Hubbard and Edgar T. Welles, with which committee all said bonds were deposited under an agreement entered into between the members of said Committee and the holders of said bonds, to the effect that said Committee should purchase and hold all said mortgaged property for the use and benefit of the holders of said bonds according to their respective interests, it being provided in said agreement that said Purchasing Committee might after the foreclosure of said mortgaged properties dispose of

the same in such manner as they might deem to be for the best interests of the holders and owners of said bonds, or organize, or cause to be organized, new corporations to take title to and operate said railroad properties for the use and benefit of said bondholders.

## 7.

That after the defendant corporation, the Terminal Company, was thus organized as aforesaid, and on January 1st, 1885, the acting Board of Directors of the Terminal Company, by formal resolution declared, that, whereas, the St. Louis Company, the Northern Company, and the Northwestern Company, and the Trustees, Dodge and How, had personally notified the said Terminal Company that its organization was approved as being in compliance with the contract of January 2nd, 1882, and, whereas, said corporations had directed their officers, agents and trustees to surrender and deliver to the Terminal Company the railroad property and franchises mentioned in said contract, and had requested said corporation "to take possession of and maintain and operate the same for the purposes and on the terms mentioned in said contract," and had indicated their desire to transfer to the Terminal Company the said property "in accordance with the terms of said contract," that therefore the Terminal Company accepted the transfer, management and operation, and assumed control of the said property from that time, so far as practicable, and instructed its President to make such order as might be necessary to render said control and management effective, "as provided in said contract," meaning the contract of January 2nd, A. D. 1882.

That on January 1st, 1885, at a meeting of the Acting Board of Directors of the defendant, the Terminal Company, the defendant Frederick M. Hubbell being present as a director and as Acting Secretary of the corporation, and taking an active part in the deliberations and doings of said meeting, a resolution was unanimously adopted as is set out in Exhibit "C" attached hereto, and made a part of this Bill.

That in said resolution it was recited and declared that the St. Louis Company, the Northern Company, the Northwestern Company, G. M. Dodge, and James F. How, under the contract of January 2nd, A. D. 1882 (referred to and set out in Exhibit "A" hereof) had approved of the organizing of the Des Moines Union Railway Company and directed their officers, agents and trustees to surrender and deliver to the said Company the railroad property and franchises mentioned in said contract, and had requested it to take possession of and maintain and operate the same "for the purposes and on the terms mentioned in said contract." It was also expressly

stated that the said three railway companies, signers of said contract, had indicated their desire and purpose to transfer said property to the Terminal Company "in accordance with the terms of said contract;" and it was explicitly stated and declared in said resolution that the Terminal Company did accept the transfer, management and operation of said property east of Farnham Street, and expressly directed its officers to assume control and management "as provided in said contract" (to-wit, as provided in the contract of January 2nd, 1882, set out as Exhibit "A" hereof.) And the said Terminal Company in said resolution expressly directed its officers to procure from the three railroad companies and the parties to said contract of January 2nd, 1882,

"Such conveyance and transfer as might (would) be necessary to fully invest this (the Terminal) Company with the title, control and management of said properties as provided for in said contract of January 2nd, 1882."

That on January 1, 1885, at a stockholders' meeting of the Northern Company, the defendant Frederick M. Hubbell, who was present as a stockholder, offered the resolution which is hereto attached marked Exhibit "D" and made a part of this Bill. That in said resolution it was explicitly declared that the Terminal Company was organized pursuant to and as "contemplated and provided in the written contract of January 2nd, 1882, (hereinbefore referred to and set out in Exhibit "A"), for the purpose of acquiring and holding the property, rights and franchises in the City of Des Moines east of Farnham Street \* \* \* and to carry out the purposes of said contract of January 2nd, 1882." And it was declared that the Articles of Incorporation of the Terminal Company, being "in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882" the Northern Company undertook to discharge the obligations of said contract toward the said Terminal Company, and the proper officers were directed to transfer to the Terminal Company all the property purchased, acquired or held by said Northern Company in pursuance of said contract. And at a meeting of the Board of Directors of said Northern Company held on November 5, 1887, the defendant Frederick M. Hubbell, being present as one of the said directors, and participating in the deliberations, a resolution was presented and adopted, which resolution explicitly declared that Jas. F. How had purchased certain property and made expenditures on the same as trustee for that Company, and that the money therefor had been furnished by the Original Wabash Company, and that under an agreement between the said Northern Company and the said Original Wabash Company, the said Trustee was to trans-

for said property to the Terminal Company "under certain conditions," and therefore the said How was, by said resolution, requested to transfer said property to the Terminal Company; and said resolution also declared that the property held by Greenville M. Dodge was by him held as Trustee for the said Northern Company, and that under an agreement between that corporation and the Original Wabash Company, and others, it was intended that he should transfer the same to the Terminal Company, "under certain conditions," (meaning the conditions and terms set forth and contained in said contract of January 2, 1882, hereto attached as Exhibit "A"), therefore the said Dodge was requested to transfer said property to the Terminal Company. A copy of which said last named resolution of said Directors is attached to this Bill as Exhibit "E" and made a part hereof.

That at a meeting of the stockholders of the Northwestern Company, held on January 1, 1885, the defendant Frederick M. Hubbell, as a stockholder, submitted to the said meeting a preamble and resolution wherein it was recited that, whereas, the St. Louis Company, the Northwestern Company, the Northern Company, G. M. Dodge, James F. How, and James F. How, Trustee, had, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines, which had theretofore been held and used by certain of the individual parties to said contract upon conditions set out in said contract (being the written contract of January 2, 1882, hereinbefore referred to and set out in Exhibit "A"), and reciting that, whereas, the Terminal Company had been organized as contemplated and provided for in said contract, and declaring that for the purpose of carrying out the said contract, the Northwestern Company accepted and ratified the Articles of Incorporation of the Terminal Company as being "in substantial accord and compliance with the terms and conditions of said contract of January 2nd, 1882," and that it would undertake to discharge the obligations imposed upon it by said contract (of January 2nd, 1882) to the end that the purposes for which the said Terminal Company was organized might be made effective; and the proper officers were directed to transfer to the Terminal Company all the property held by the Northwestern Company, or any trustee, "purchased, acquired, or held in pursuance of said contract," and the officers were directed to turn over the management and operation of its property in Des Moines to the Terminal Company. A copy of which resolution is fully set out and attached to this Bill as Exhibit "F", and made a part and parcel of this Bill.



That at a meeting of the stockholders of the St. Louis Company, held on January 1, 1885, the defendant Frederick M. Hubbell being present and actively taking part in the deliberations, and acting as Secretary of said meeting, a resolution was unanimously adopted reciting the making of the written contract of January 2nd, 1882 (set out in Exhibit "A" hereto), and that the property and franchises therein referred to in Des Moines was purchased, held, controlled and used upon the conditions set out in said contract, and that the defendant corporation had been organized as contemplated and provided in said contract of January 2nd, 1882 (meaning the contract set out in Exhibit "A" hereto), and therefore the St. Louis Company accepted and ratified the Articles of Incorporation of the Terminal Company "as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882," and the St. Louis Company by said resolutions undertook to discharge the obligations imposed upon it by said contract of January 2nd, 1882, "in order to make effective the purposes of said" Terminal Company. And the proper officers of the said St. Louis Company were instructed to transfer to the Terminal Company all said property, a copy of which said resolution is hereto attached, marked Exhibit "G", and made a part and parcel of this Bill.

That on November 8th, 1887, the directors of the said St. Louis Company adopted a resolution declaring that the money for the purchasing of the property in Des Moines held by Jas. F. How had been and was furnished by the Original Wabash Company, and that under an agreement with that Company, and others, it was intended that the property should be transferred to the Terminal Company "under certain conditions," (meaning the terms and conditions stated and set forth in said contract of January 2nd, 1882), and declaring that the property held by Greenville M. Dodge was also held as Trustee for the said St. Louis Company, and that under an agreement between the St. Louis Company and the Original Wabash Company, and others, it was intended that said property held by Dodge should be transferred to the Terminal Company "under certain conditions," (meaning the conditions contained in said contract of January 2nd, 1882, hereto attached as Exhibit "A"), therefore said Dodge and said How were, by said resolution, requested to transfer the said property to the Terminal Company; and the officers of the said St. Louis Company were directed by said resolution to convey said property to the Terminal Company; and it was explicitly declared in said resolution that it was being offered for the purpose of carrying out the contract of January 2nd, 1882, entered into by and between this (St. Louis) Company, the Northwestern Company, the Northern Company, and others. Said resolution so offered

was unanimously adopted at said Directors' Meeting, the defendant Frederick M. Hubbell being present as one of the directors, and as Secretary, and actively participating in the deliberations and acts of the said meeting. A copy of said resolution is attached to this Bill, marked Exhibit "H" and made a part hereof.

That notice in writing and copies of the said resolutions by the said three railroad companies were furnished and delivered to the defendant corporation, the Terminal Company, and on the 8th day of November, 1887, its directors at a regular meeting considered the same and caused them to be entered in full upon the records of the said Terminal Company, to-wit, the records of the said Board of that date, the said resolutions being fully copied into and spread upon the said record. And thereupon, at the same meeting, the Board of Directors of the defendant corporation, the Terminal Company, authorized its officers to deliver to the said three railroad companies, or the parties then holding the title of the property as trustees (How and Dodge) "bonds for the amount of money, with interest and taxes added" which had been "expended by or through them for or on the property referred to."

Your orators attached hereto as Exhibit "I", a copy of the notice in writing so given by the St. Louis Company; as Exhibit "J", a copy of the notice given by the Northern Company, and as Exhibit "K", a copy of the notice given by the said Northwestern Company, each of said three exhibits being made a part of this Bill.

That it was explicitly stated and set forth in each of said notices that the said How and Dodge held the said property as trustee only, and that the money for the purchasing of said property had been furnished to How by the Original Wabash Company; and it was also explicitly stated and set forth in each of said notices to the Terminal Company, the defendant herein, that the transferring of said property by these trustees to said Des Moines Union Railway Company was pursuant to the agreement of January 2nd, 1882, heretofore set out as Exhibit "A".

That said How and Dodge, pursuant to the foregoing resolutions, executed quit claim deeds to the Des Moines Union Railway Company, copies of which are hereto attached as Exhibits "L", "M", "N", and "O", and made a part of this Bill, said deeds being delivered to the Terminal Company on or about April 26th, 1888, April 27, 1888, and May 1st, 1888.

8.

And your orators further show that in the month of January, 1887, a decree of foreclosure and sale was entered in the



foreclosure suit of the Central Trust Company of New York against the Original Wabash Company in the Circuit Court of the United States for the Eastern District of Missouri, in pursuance of which decree all the property of said Original Wabash Company was, on or about the . . . day of April, 1887, offered for sale at public auction and sold to the Purchasing Committee. That said sale was duly confirmed and approved by said Court, and in pursuance thereof deeds were executed and delivered to said Purchasing Committee, conveying to said Committee all said mortgaged railroad and property. That thereupon said Committee caused to be organized under the laws of Missouri, a corporation to be known as the Wabash Western Railroad Company, to which Company said Purchasing Committee conveyed all the mortgaged railroad and property formerly belonging to said Original Wabash Company lying west of the Mississippi River, which included all the railroad of said Company in the State of Iowa.

## 9.

And your orators further represent and show to the Court that in each of the three deeds made by the said How it was explicitly recited, stated and declared, that the Original Wabash Company had furnished the money and funds for the purchasing and acquiring of the property therein described and conveyed; that the said How held the said property and the title thereto only in trust for the said Original Wabash Company; that said property was acquired and held for the purposes and upon the terms set forth in the written contract of January 2nd, 1882, (Exhibit "A" hereto attached), and that said Original Wabash Company had consented to the said contract; that at the request of the said Original Wabash Company the said How had theretofore declared and stated in writing that he, the said How, held the legal title to the property in trust for the St. Louis Company and the Northwestern Company; and each of said deeds recited the resolutions of the Board of Directors of the St. Louis and Northwestern Companies heretofore referred to and set out in Exhibit "F", "G" and "H" hereto attached and made a part of this Bill. That said deeds each declared that the conveyance by the said How to the Terminal Company was made by reason of the said resolutions and in consideration of the matters hereinbefore set out in this Bill, and for the consideration of one dollar, and were mere quit-claim deeds.

That the said three deeds from the said How covered the following property, to-wit:

"Official Plat Lot three (3) in the Northwest quarter of Section (9), Township seventy-eight (78) Range twenty-four

(24) West of the 5th P. M. Iowa; Lot six, and the south half of Lot five in Block twenty-two (22) Lots five (5) and seven (7) and the south sixty-six (66) feet of Lots one (1) and two (2) and the south half of Lot three (3) all in Block thirty-one (31); Lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) in Block thirty-two (32) all in Keene & Poindexters Addition to Fort Des Moines; Lot three, Block fourteen and Lots five and six in Block fourteen; Lots five and six and the north two-thirds of Lot seven in Block 18, Lot three in Block twenty-two, Lot three and the west half of Lot five (5) and six (6) in Block nine, all in Hoxies Addition to the town of Fort Des Moines; Lot nine and the north two-thirds of Lot four in Block thirty-five (35); Lot four (4) and the north two-thirds of Lot nine (9) in Block Thirty (30), Lot Four (4) and the south two-thirds of Lot Nine (9) in Block twenty-five (25); Lot nine and the south one-third of Lot ten (10) less a strip four feet in width from the north side of said one-third and the south one-third of Lot three (3) in Block twenty (20); Lots one (1) two (2) seven (7) and eight (8) in Block fifteen (15); Lots one (1) two (2) and leasehold interest seven (7) and eight (8) in Block nine (9); Lot two (2) in Block four (4), all in the original town of Fort Des Moines; Lots five (5) and six (6) in Block D, Lot Twelve (12) in Block 1, Lots three (3) and twelve (12) in Block Three (3), all in Scott & Dean's Addition to Fort Des Moines. The right of way in the rear of Lot Seven (7) in Block Fourteen (14) beginning at the west line of Seventh Street and extending westward ninety-nine feet; Lots Seven (7) and Fifteen (15) in Block Sixteen (16); Lots twelve (12) and thirteen (13) in Block eleven (11); Lots ten (10) and eleven (11) in Block twelve (12); Lots one (1) and nine (9) and official plat Lot Eleven (11) in Block twenty-one (21); all interest in alley adjoining lots one (1) and two (2) in Block thirteen (13); Lots eight (8), Nine (9), Fifteen (15) and sixteen (16) in Block thirteen (13); Lot fifteen (15) in Block fifteen (15); the undivided one-fourth of Lot two (2) and official plat lot thirteen (13) in Block twenty-two (22); Lots three (3), four (4), five (5), six (6), seven (7) and eight (8) in Block twenty-three (23), all in the Town of Des Moines; Lot twenty-three (23) north two and seventy-five one-hundredths acres of Block Forty (40); west one-third (now official plat Lot One (1) of Block forty-five (45), all of Lot thirty-six (36), all in Brooks and Company's Addition to the City of Des Moines.

The several Lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows: Lot One (1) of the Official Plat of Lot twenty-four (24) and Lot Two (2) of the Official Plat of Lot twenty-five (25) and Lot One of

the Official Plat of Lot twenty-six (26), all in Brooks and Company's Addition to the City of Des Moines; and the east one-half ( $\frac{1}{2}$ ) of Lot Two (2) in Block Fifteen (15) in the Original Town of Fort Des Moines. Also the right of way in Alley adjoining Lots One (1) and Two (2) in Block thirteen (13) in the Town of Des Moines, and Lot Nine (9) in Block Twelve (12) in the Town of Des Moines, now a part of the City of Des Moines.

A strip of land fifty (50) feet in width, lying north of and adjoining the north line of the right of way of the Chicago, Rock Island and Pacific Railway, and being part of Lot two (2) of the official plat of the north-west quarter of the north-east quarter of Section eight (8), Township Seventy-eight (78) North Range Twenty-four (24), west of the Fifth P. M., lying and being in the City of Des Moines, County of Polk, State of Iowa."

That the deed from G. M. Dodge (Grenville M. Dodge) was a mere quit-claim deed, the consideration expressed being "One Dollar and other valuable considerations" and covered the following described property:

"Lots number One (1) and two (2), in Block number twenty-two (22), in H. M. Hoxie's Addition to the Town of Fort Des Moines, now (then) included in the corporate limits of the City of Des Moines."

That about the same time the Northwestern Company also conveyed to the Terminal Company, by quit-claim deed, all the property then held by it, and being its property referred to in the contract of January 2nd, 1882 (Exhibit "A" hereto attached), in the City of Des Moines, and which was covered by and embraced in the terms of said written contract; and the St. Louis Company and the Northern Company soon thereafter also executed quit-claim deeds to the Terminal Company covering the property held by them and such rights in the streets and alleys as they acquired from the City of Des Moines, or acquired by condemnation of property, and which was covered by and embraced within the terms of said contract of January 2nd, 1882; and the deeds or conveyances made as aforesaid constitute the only evidence of title, and create the only right that the Terminal Company has or ever had in the property therein described.

#### 10.

And your Orators further represent and show to the Court that by virtue of the deeds made as and under the circum-

stances aforesaid, said Terminal Company took the property charged with the duty of holding, managing and administering the same, and whatever additions might be made thereto, subject to the joint and common use in perpetuity of and by the said St. Louis Company, the Northern Company, and the Northwestern Company, and their successors in title to their said respective railroads, and subject to the right of said three railroad companies and their successors in title to their respective railroads perpetually to have the use of said property as terminal facilities in Des Moines under and according to the terms of said contract of January 2nd, 1882 (Exhibit "A" hereof)

## 11.

And your orators further represent and show to the Court that thereafter the companies then owning said three railroads purchased more property adjacent to that theretofore acquired and turned over to the Terminal Company, and built a Union Passenger Depot, and additional side-tracks, or spur tracks, to industries as contemplated by and to be held on the terms of the contract of January 2nd, 1882 (herein referred to as Exhibit "A"), and the Terminal Company issued its negotiable mortgage bonds for the cost thereof, to reimburse said companies.

## 12.

That all of the bonds issued by the Terminal Company, as hereinbefore stated, and all bonds subsequently issued by it, as hereinafter stated, provide for and draw interest at five per cent per annum, and were and are secured by a mortgage or deed of trust bearing date November 1st, 1887, which the companies then owning said three railroads caused the Terminal Company to execute pursuant to the contract of January 2nd, 1882, conveying to the Central Trust Company of New York, as Trustee, in trust, all the terminal properties acquired and then held as aforesaid by the said Terminal Company, and described in said mortgage as follows, to-wit:

"Commencing at the east end of Market Street, in Brooks & Co's Addition to Des Moines, Iowa, and running thence west on Market Street, crossing Twenty-fourth Street, Twenty-third Street, Twenty-second Street, Nineteenth Street and Seventeenth Street to the west line of East Eleventh Street in said City; thence westerly along and across Vine Street from East Eleventh Street to East Eighth Street and on, over and along the alleys in Blocks Twenty-one, twenty-two and twenty-three of the Town of Des Moines, now included in the City of Des Moines, crossing East Twelfth Street, East Eleventh Street, East Tenth Street and East Ninth Street, thence west between Court Avenue and Vine Street, crossing all the streets and

alleys of said City between East Ninth Street and East Fourth Street, thence westerly along the south alley between Court Avenue and Vine Street in said City to West Fifth Street, crossing East Fourth Street, East Third Street, East Second Street, and Front Street, Water Street, West Second Street, West Third Street, West Fourth Street and West Fifth Street, and across all north and south alleys between East Fourth Street and West Fifth Street of said City, thence westerly in said City on the alley between Cherry Street and Vine Street from West Fifth Street to the line of Fourteenth Street or Section Street if extended south of Mulberry Street, crossing West Sixth Street, West Seventh Street, West Eighth Street, West Ninth Street, West Tenth Street, West Eleventh Street, West Twelfth Street, West Thirteenth Street, and thence westerly to Farnham Street and crossing all the north and south alleys of said City between West Fifth Street and West Thirteenth Street, together with all other lines, branches, extensions, switches and side tracks, which are now or may be hereafter constructed, to connect the lines of property of said Company with the lines of other railway companies converging in Des Moines, Iowa, or which are or may be built to any other point within said City.

Also all lots of land upon any part of which said railway, its extensions, side tracks, or branches, or any of them, or any depots, shops, round houses, water tanks or other structures, now are or may be hereafter constructed, and of which the said railway company is or may become the owner or holder by deed, lease, or other beneficial interest, to the full extent of said railway company's interest therein, as the same does now or may hereafter exist.

Also the bridge of said railway company over and across the Des Moines River in said City, touching upon and lying immediately north of the south alley between Court Avenue and Vine Street in said City, with all the approaches and appurtenances thereto owned or used by said Company in connection therewith.

Also the property and realty embraced in the several conveyances made to the said Des Moines Union Railway Company by James F. How, Trustee, James F. How, Grenville M. Dodge, the Des Moines Northwestern Railway Company, the Des Moines & St. Louis Railway Company, and the St. Louis, Des Moines & Northern Railway Company, or any other person or corporation not specially named above, and for which conveyance reference is hereby prayed to the records of said Polk County, Iowa.

And all other branch or tributary roads which are now owned or that may be hereafter acquired, located or constructed,

including the right of way therefor, the roadbed thereof, the superstructures and tracks placed or to be placed thereon, and all station, depot and shop grounds, yards and other grounds, used and to be used in connection therewith, and all rails, railways, bridges, tracks, sidings, switches, fences, turn-tables, water-tanks, viaducts, culverts, main passenger and other depots, station-houses, freight-houses, machine-shops, and all other structures, buildings, and fixtures, howsoever acquired or to be acquired, for the use of the parties of the first part, or the business thereof.

It being the intention of said Des Moines Union Railway Company to convey to said Trustee, not only the property specifically described herein, but also, All and Singular the whole line of railroad of the party of the first part, as the same now is, or may be hereafter located, constructed or acquired, under its charter, with all lines of road connecting its tracks with other lines of railroad, with which it may join or intersect; and all such spurs, extensions, side-tracks, yard-tracks, turn-outs, switches and appurtenances as it has constructed or may hereafter construct to enable it to connect with warehouses, elevators, stockyards, mills and manufacturing establishments along or near its routes, as well as all real estate now owned or hereafter acquired, with all the tracks and improvements thereon, which said Des Moines Union Railway Company now has or may hereafter find it necessary or proper to have in order to enable it to transact a general railway transfer business in and about the City of Des Moines, Iowa.

Together with all the rolling stock, machinery, tools, implements, fuel and materials of the party of the first part now owned or that may be hereafter acquired for constructing, maintaining, operating, replacing, improving, or repairing the said road, and its appurtenances, or any part thereof, or in or for the business of said railroad, and all the real estate of said party of the first part wherever the same may be situated, now held, or hereafter to be acquired.

Together with all the corporate rights, privileges and franchises of the said party of the first part, now possessed or that may be hereafter acquired, connected with or relating to the said railroad and the construction, maintenance, use and enjoyment of the same.

Together with all the streets, ways, passages, water-courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of the hereby granted, and mentioned premises and states, appertaining or belonging thereunto, with all the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim and demands of every nature and kind whatsoever



of the said party of the first part now owned and possessed, or that may be hereafter acquired, as well at law as in equity, of, in and to the same, and every part and parcel thereof."

And your orators further show to the Court that the execution of the said mortgage bonds, as aforesaid, was, in all respects in accordance with and as provided in said contract of January 2nd, 1882 (Exhibit "A" attached to this bill,) and was duly authorized and approved by the said Companies then owning said three railroads. And thereafter said mortgage or trust deed constituted, and now constitutes, a first lien, upon all of the said property, and that none of the said negotiable bonds as issued by the defendant corporation have been paid.

And your Orators further represent and show that of the aforesaid bonds sufficient were issued and delivered to each of the three railway companies at par to reimburse it for the amount of money paid by it for the original property which it had contributed as aforesaid to the joint property, and interest thereon at six per cent per annum, and thereafter additional bonds were likewise issued and delivered to each of the said railway companies from time to time for money by it expended or advanced for property that was added to the said original property, and that all such added grounds or property which now stands in the name of the defendant corporation, (the Terminal Company) was paid for by bonds issued under the mortgage aforesaid, except such as were paid for out of the fund which arose from rents received for property or privileges and for switching charges received from other railroad companies or persons, as will be hereinafter stated and more fully set out.

13.

And your orators further represent and show to the Court that up to the first day of May, 1888, the said terminal property had been managed by the St. Louis Company under and pursuant to the terms of the written contract of January 2nd, 1882 (Exhibit "A" herEOF); and on said May 1st, 1888, the property was all turned over to the Terminal Company (the Des Moines Union Railway Company), and was thereafter managed and conducted by it under and pursuant to the terms of said contract of January 2nd, 1882, and in strict compliance with its terms.

That about the same time certain parties, including the defendant, F. M. Hubbell, who were then promoting and managing the affairs of the Terminal Company, and who claimed to each be the holder of one share of stock in said Terminal Company, at a meeting at the Company's office in Des Moines, un-

animously resolved that the operating expenses, taxes, and interest on bonds that were then or thereafter to be issued by the Terminal Company, after deducting any amount received from other sources for rental, be paid, pro-rata, on a "wheelage basis" by the three railway companies, and that such payments, including interest charges, be made monthly; and that a contract so providing and also "covering in detail the conduct and operation of the Des Moines Union Railway Company" for thirty years from May 1st, 1888, be approved and executed by all the lines then "holding an interest in the property."

Your orators further state that while the right to use said terminal facilities was secured to said three railroad companies by said contract of January 2nd, 1882, (Exhibit "A" hereto attached), on the terms hereinbefore stated, yet neither of said railroad companies had obligated itself to use said terminals, and each was therefore at liberty to cease to use the same at any time and was at liberty to withdraw its wheelage therefrom, and thereby burden the company or companies continuing to use the said terminal facilities with the entire cost of maintaining and operating said terminals, including the taxes, insurance, and the interest on said bonds; that the time or dates on which said three railroad companies should make the payments to the Terminal Company provided for in said contract of January 2nd, 1882 (Exhibit "A" hereto attached), had not been fixed; and for the purpose of obligating each of the said proprietary railroad companies with respect to said matters, as well as to render said bonds marketable or saleable, by making certain the payment of interest thereon until their maturity, the said proprietary companies on May 10th, 1889, entered into a supplemental terminal contract with each other, with the Terminal Company, by the terms of which terminal contract each of the three railroad companies obligated itself to use said terminal facilities until the maturity of said bonds, and the dates on which payments of interest, taxes, and expense of operating and maintaining the terminals should be paid by each of said railroad companies into the Treasury of the said Terminal Company were fixed; and said last named contract also fixed in greater detail the manner in which said Terminal property should be managed and conducted, a copy of which said contract is hereto attached, marked Exhibit "P" and made a part of this bill. But your orators aver that under the terms of said contract, more particularly under Section Twenty-two thereof, the management and control of the property, and the conduct of the parties, and their successors in interest, were and are fixed and prescribed only until May 1st, A. D. 1918, and does not change or affect the rights, obligations or duties of the parties under the agree-



ment of January 2nd, 1882, (Exhibit "A" hereto attached), after said May 1st, A. D. 1918, being the date of maturity of said bonds.

And it was also agreed in said last named contract, that the said Companies owning the said three Railroads should be entitled to the capital stock of the Terminal Company in the same proportions that it was agreed in the contract of January 2nd, 1882, the cost of said terminal property should be borne by said Companies, that is to say, the St. Louis Company should be entitled to 10,000 shares and the Northwestern and the Northern Companies each to 5,000 shares thereof, said shares being for \$100.00 each, and the total capital stock of the Terminal Company being Two Million Dollars.

14.

Your orators further state that on account of the nature of said Terminal Company, arising from its limited powers, its capital stock, as well as the shares thereof, were merely nominal and of nominal value. All of which was then well known to defendant Frederick M. Hubbell. And he also then well knew that said three Railroad Companies that had entered into said contract of May 10, 1889, with each other with said Terminal Company (Exhibit "P"), had organized said Terminal Company as a mere agency, and for their own convenience in the matter of keeping the books and accounts incident to the construction, maintenance and operation of said terminals for their joint and common use, and that all said railroad companies, and their officials, regarded the stock thereof as merely nominal, and of nominal value, and that none of said railroad companies intended to sell or dispose of said stock, or issue the same, to others than the railroad companies who were or might thereafter become entitled to use said terminal facilities, and your orators state that by said contract of May 10, 1889, (Exhibit "P"), it was, among other things, agreed that said three Railroad Companies then having the right to use said terminals, should be entitled to the capital stock of the Terminal Company in the following proportions, to-wit; the St. Louis Company to 10,000 shares thereof, of the par value of One Hundred Dollars (\$100.00) each, nominally amounting in the aggregate to one million dollars; the Northern Company to 5,000 shares thereof of the par value of One Hundred Dollars (\$100.00) each, nominally amounting in the aggregate to Five Hundred Thousand Dollars; and the Northwestern Company to 5,000 shares thereof, of the par value of One Hundred Dollars (\$100.00) each, nominally amounting to \$500,000; and that all the certificates of said stock should, when issued, express upon their face that they were not transferrable in whole or in part, without the consent in writing, of all the Railroad

Companies parties to said agreement, excepting, however, that any shares of the said stock issued on request of either of said Companies, to any person to qualify him as a member of the Board of Directors, might be retransferred to the Company on whose request they had been issued, without the consent of the other Companies.

Your orators further state that at and before the date of the execution of said contract of May 10, 1889, (Exhibit "P"), the defendant Frederick M. Hubbell was, and continued to be throughout all the transactions, on all the dates hereinafter mentioned, a director as well as the secretary of the St. Louis Company; that throughout all said transactions, and all said dates, he was also a member of the Board of Directors, and President of said Northwestern Company, and that throughout all said transactions, and on all said dates, he was also acting as a Director of said Terminal Company, and as the Secretary and Treasurer thereof.

And your orators further state that on or about the date, or soon after the date, of the execution of said contract of May 10th, 1889 (Exhibit P), the defendant Frederick M. Hubbell, while being and acting as a Director and Secretary of the St. Louis Company, and while being and acting as a Director and President of the Northwestern Company, and while also acting as a nominal Director, as well as the nominal Secretary and Treasurer of said Terminal Company, conceived of a plan whereby he hoped to enrich himself in the manner hereinafter stated, at the expense of the aforesaid corporations, of which he was at the time a trusted officer.

That having determined upon said plan, the first step in execution thereof was to acquire for himself from said Railroad Companies, of which he was at the time an officer, a majority of the nominal capital stock of said Terminal Company, at nominal prices. And although as Secretary of said St. Louis Company, he, the said Frederick M. Hubbell, at the time well knew that said St. Louis Company was (under said contract of May 10th, 1889 Exhibit P), entitled to receive one-half the nominal capital stock of said Terminal Company, of the par value of \$1,000,000., and although he then well knew that said St. Louis Company had not sold, or in any manner disposed of the same, or any part thereof, or of its rights in said stock, and although he then well knew as Secretary of said Terminal Company, that none of the nominal capital stock of said Terminal Company had then been issued, and although he then well knew, as Treasurer of said Terminal Company, that nothing of value had been paid to, or received by said Terminal Company on account of said nominal capital stock, yet notwithstanding his knowledge of all the matters and things aforesaid,

he did, on or about the first day of February, 1890, purchase from one O. D. Ashley, as a member of said Wabash Purchasing Committee, One Hundred and Thirty-five (135) First Mortgage Bonds of said Terminal Company of the par value—and also of the then market value—of \$1,000.00 each, and as a part of said transaction, said Ashley agreed on behalf of said Committee that said Hubbell should be entitled to whatever title and interest said Committee then had, to one-half of the shares of said nominal capital stock of said Terminal Company (of the [part] value of \$750,000.00) which by said contract of May 10th, 1889 (Exhibit P), it was agreed that the St. Louis Company was entitled to receive.

And your orators further state that again, on or about the 12th day of February, 1890, the said Frederick M. Hubbell purchased from said Ossian D. Ashley, as a member of said Wabash Purchasing Committee, Fifty (50) First Mortgage Bonds of said Terminal Company, of the [part] value—and of the then market value—of One Thousand Dollars (\$1,000) each, and as a part of the same transaction, in consideration of the sum of \$7,500.00 said Ashley agreed on behalf of said Purchasing Committee, that said Frederick M. Hubbell should be entitled to receive all the title and interest of said Committee in an additional one-fourth of the shares of said nominal capital stock of said Terminal Company (of the par value of \$250,000.00) which by said contract of May 10th, 1889 (Exhibit P), it was agreed the St. Louis Company was entitled to receive.

But your orators state that neither said Ashley, nor said Wabash Purchasing Committee, either at the date of the transactions last aforesaid, or at any other time, owned or were authorized to sell or dispose of said nominal capital stock, or any part thereof, and said Frederick M. Hubbell, as a Director and Secretary of said St. Louis Company, then well knew that neither said Ashley, nor said Wabash Purchasing Committee, at the date of said transactions, or at any other time, owned or had authority to sell to him, the said Hubbell, the nominal capital stock of said Terminal Company above mentioned, or any part thereof.

And your orators state that said Frederick M. Hubbell had made his pretended purchase of said stock from said Wabash Purchasing Committee, for the sole purpose of concealing the fact that he was acquiring, or trying to acquire, in a secret way for himself, for the nominal consideration of \$7,500.00, said capital stock of the par value of \$750,000.00, which he then knew, in fact and of right, belonged to the St. Louis Company, of which he was at the time a Director. And being at the time Secretary of said Terminal Company, his plan and intention then was to so formulate the proceedings and records of said

Company, as to have the certificates for said stock, when the same should afterwards be issued by himself, as Secretary, show on their face that said nominal capital stock of said Terminal Company of the par value of \$750,000.00 had been first issued to said Purchasing Committee, and afterwards transferred by said Committee to himself, or to the firm of F. M. Hubbell & Son, of which firm he was, at the time, the senior and controlling member.

And your orators further state that on or about the date of said contract of May 10th, 1889 (Exhibit P), the said defendant Frederick M. Hubbell had acquired control of the Des Moines & Northwestern Railway Company, in such manner as would and did afterwards enable him to have transferred to himself, for a nominal consideration, the 5,000 shares of the nominal capital stock of said Terminal Company (of the par value of \$500,000.00) which by the terms of said contract of May 10th, 1889 (Exhibit P), the said Des Moines & Northwestern Railway Company was entitled to receive.

And your orators further state that having by his contracts and arrangements made as aforesaid, succeeded in establishing such relations between himself and said Wabash Purchasing Committee, and between himself and the said Des Moines & Northwestern Railway Company, as would, as he then believed, enable him to procure the transfer of five-eighths of the nominal capital stock of said Terminal Company (of the par value of \$1,250,000.00) to himself, as soon as, and whenever the same should be issued, he, the said Frederick M. Hubbell, then entered upon the execution of the second step in his said plan, which was to make it appear upon the face of the records and books of said Terminal Company as follows:

1st. That said nominal capital stock, the possession and control of which (when the same should be issued) he had then secured to himself, as hereinbefore stated, was fully paid and non-assessable, and that too without the payment by himself, or anyone else, of any money whatever into the Treasury of said Terminal Company, or the delivery to said Company of any property or thing of value, on account thereof, when he, the said Hubbell, then well knew that no money or property, or thing of value, had been previously paid into the Treasury of said Terminal Company, or delivered to it on account of said stock.

2nd. To make it appear upon the face of the records and proceedings of said Terminal Company, that said Company was a corporation for pecuniary profit, when he, the said Frederick M. Hubbell, then well knew that it was a corporation created as a mere agency, and only for the convenience of said

Railroad Companies in the matter of keeping the books and accounts of said Railroad Companies, in the business of constructing, improving and operating said terminal properties.

3rd. To make it appear upon the records and proceedings of said Terminal Company, that the 7,500 shares of said nominal capital stock of said Terminal Company (for the acquisition of which he had bargained with said Purchasing Committee) then belonged to said Committee, and not to said St. Louis Company, of which he was then a Director, when he at the time well knew the title to said 7,500 shares of said nominal capital stock was, by said contract of May 10th, 1889 (Exhibit P), vested in said St. Louis Company, and also well knew that said St. Louis Company had not parted with its ownership thereof.

And your orators further state that defendant Frederick C. Hubbell is a son and business partner of defendant Frederick M. Hubbell, and that said defendants have at all times herein mentioned, resided at the City of Des Moines, and have been for many years, and now are, large owners of real estate, insurance companies and other business enterprises in said City; and as stockholders of corporations located and doing business in said City, that in all the transactions hereinbefore and hereinafter mentioned, they have at all times pretended to be interested in promoting the public welfare of said City, as well as the private interests of all said Railroad Companies of which said Frederick M. Hubbell is and has been a Director and officer, to-wit, the St. Louis Company, the Northern Company, and the Northwestern Company, all of which are common carriers of freight and passengers, and the operation of their said lines of railroad into said City, and over said terminal tracks and properties at the least possible expense to consignees and shippers, has been and will at all times continue to be, a matter of public interest, and necessary to the growth of said City, the prosperity of its inhabitants, and the development of manufacturing and other business interests.

And your orators state that both said defendants Frederick M. Hubbell, and Frederick C. Hubbell, now are, and have been for many years, well known throughout the country, and especially throughout the State of Iowa, for their business sagacity and foresight, and that until the occurrences herein-after mentioned, their advice and recommendations respecting the management of all said railroads and terminal properties, in and about the said City of Des Moines, were at all times accepted and acted upon by all their associate directors, and other officers and managers of said corporations, without hesitation, and without suspicion, respecting their good faith,

in all matters affecting the interests of said Railroad Companies, of which they were at the time directors and officers.

But your orators state that notwithstanding the truth of the several matters and things last aforesaid, the said Frederick M. Huddell in furtherance of his said plan to enrich himself at the expense of said corporations, of which he was at the time an officer, combined and confederated with defendant Frederick C. Huddell, and with divers other parties to your orators at present unknown (but whose names when discovered your orators pray that they may be at liberty to insert in this bill with apt words to charge them as parties defendants), and contriving how they might so manipulate the proceedings and records of said corporations as would accomplish their designs and purposes, and at the same time give said records and proceedings the appearance, on their face, of representing the free and voluntary acts of their associate officers, without any suggestions from them, or either of them, in the premises, caused a statement to be written into a book, purporting to be a record of the corporate proceedings of said Terminal Company, to the effect that said Frederick M. Huddell had been elected Secretary of said Terminal Company, and thereupon, on or about the 1st day of February, 1890, said defendants, Frederick M. Huddell and Frederick C. Huddell, and their confederates, in further execution of their said plan and purpose to deprive said three Railroad Companies and their successors of their said rights to use said terminal properties in common and in perpetuity, as provided in said contract of January 2nd, 1882, by transferring the aforesaid rights of said Railroad Companies in said terminals under said contract, without consideration to said Terminal Company, thereby hoping to make the nominal capital stock of said Terminal Company, of which they now claim a majority, of great value to themselves, without the expenditure of any money on their part, caused to be issued to certain persons whom they designated and addressed as stockholders of said Terminal Company, pretended notices stating to, and notifying said parties, that on a certain day there would be a meeting of said persons as stockholders of said Terminal Company, for the purpose of amending Articles of Incorporation of said Terminal Company.

And your Orators further show that afterwards they, the said defendants Frederick M. Huddell and Frederick C. Huddell, and their confederates, caused an untrue statement to be written into what purports to be the record book of said Terminal Company, to the effect that a meeting of the stockholders of said Company had been held on or about the 8th day of April, 1890, in pursuance of said pretended notices, at

which the following named persons were present as stockholders, or as representatives or proxies for persons who were owners of shares of the capital stock of said Terminal Company, to-wit:

J. F. How .....	representing one (1) share
C. M. Hays .....	representing one (1) share
F. M. Hubbell .....	representing one (1) share
L. M. Martin .....	representing one (1) share
F. C. Hubbell .....	representing one (1) share
A. B. Cummins .....	representing one (1) share

And that G. M. Dodge was present at said meeting as the owner of one share by L. M. Martin, and that W. H. Blodgett was present at said meeting as the owner of one share by J. F. How.

Your orators further show that at the time said defendants, Frederick M. Hubbell and Frederick C. Hubbell issued said pretended notices to the persons aforesaid, informing them that on a day stated there would be a meeting of the stockholders of said Terminal Company, for the purpose of amending the Articles of Incorporation of said Company, and also at the time of the alleged meeting of the stockholders of said Company, to-wit, on or about the 8th day of April, 1890, none of the persons to whom said alleged notices were addressed, or who are named in said alleged record as being present as stockholders at said meeting, in person or by proxy, had either subscribed for any share or shares of the stock of said Terminal Company, or paid or delivered to said Terminal Company or into its Treasury, any money, or other thing of value, on account of any stock therein, nor had said persons, or any one of them, in any wise obligated themselves to subscribe for, or become in any manner a stockholder in said Terminal Company, nor had they, or either of them, by purchase or otherwise, become the owner or holder of any share or shares of the stock of said Terminal Company, or the agent or proxy of any such owner or holder.

And your orators further show that in furtherance of their said unlawful design to injure your orators as aforesaid, they the said defendants, Frederick M. Hubbell and Frederick C. Hubbell, caused it to be stated in writing in what purports to be the record book of said Terminal Company, that the Des Moines & St. Louis Railroad Company was present at said meeting by J. F. How, President; that the Des Moines & Northwestern Railroad Company, successor to the Des Moines Northwestern Railway Company, was present at said meeting by Frederick M. Hubbell, President, and that the Des Moines and Northern Railroad Company, successor to the St. Louis, Des



Moines & Northern Railway Company, was present at said meeting by A. B. Cummins, Vice President, thereby intending to imply and have it appear by said writing in said record book, that said Companies were each of them present as stockholders, at a meeting of the stockholders of said Terminal Company, held on said date, when in fact and in truth neither of said Railroad Companies were present at said meeting as a stockholder, or otherwise, as made to appear in and by said sham or pretended record. But your orators state the truth to be that at the date of said pretended meeting of the stockholders of said Terminal Company, for the alleged purpose of amending the Articles of Incorporation of said Terminal Company, as stated in said pretended record book, no stock of said Terminal Company had been subscribed for by, or issued to anyone.

And your orators further state that by the Articles of Incorporation of said Terminal Company, as adopted on or about December 10th, 1884, it was therein provided that said Articles could only be amended by a vote of more than three-fourths of all said stock in favor thereof, at a meeting of stockholders called for that purpose, of which a notice containing the proposed amendment should be mailed to each stockholder at his address, as disclosed by the transfer books of the Company, and that notice of such proposed meeting should also be given by publication for three successive weeks in some newspaper published in said City of Des Moines, Iowa.

And your orators state the fact to be that no notice of any proposed meeting of stockholders, containing any proposed amendment of said Articles of Incorporation, was ever mailed, or otherwise delivered to any stockholder of said Company at any time before said alleged meeting, nor has there been a vote of more than three-fourths of all the stock or a vote of any of the holders of the stock of said Terminal Company, at any time at any meeting, in favor of any amendment of said Articles of Incorporation.

Wherefore, your orators state that by reason of the several matters and things hereinbefore stated, there has been in fact no amendment of the Articles of Incorporation of said Terminal Company, and that the same are now, in all respects the same as they were adopted and filed in the office of the Recorder of Deeds, within and for said County of Polk, on or about December 10th, 1884, and in the office of the Secretary of State for said State of Iowa, on or about the 11th day of February, 1885.

And your orators further state, that by the Articles of Incorporation of said Terminal Company, the holders of the shares of its stock were not authorized to so amend said Articles as to affect in any manner whatever, the rights reserved by and



secured to your orators by said contract dated January 2nd, 1882, to use said terminal facilities and property, as and on the terms therein stated, but on the contrary, said Articles of Incorporation provided that neither the directors nor the stockholders of the Terminal Company, should have authority or power to affect in any manner the rights of your orators, or their predecessors, to use said terminal facilities and property, as reserved by and secured to them by said contract of January 2nd, 1882, and to so use the same as and on the terms stated in said contract. Your orators further represent and show that neither your orators nor their predecessors have at any time consented to the adoption of said alleged amended Articles of Incorporation, or ratified them, and that neither of them had any information or knowledge of or with respect to said alleged amended Articles of Incorporation, until the time said defendants Frederick M. Hubbell and Frederick C. Hubbell set up their claims as hereinafter stated.

Your orators further show that in said pretended record it is made to appear that by the unanimous vote of the stockholders of said Terminal Company, the Articles of Incorporation of said Terminal Company had been amended in the following particulars, to-wit:

1st. That Article I of said Articles of Incorporation was stricken out and a new article of the same number adopted and substituted therefor, which provided that the name of the corporation should be the "Des Moines Union Railway Company" and that its principal place of transacting business shall be at said City of Des Moines.

2nd. That Article II of the Articles of Incorporation was repealed and stricken out and a new Article of the same number adopted and substituted therefor, which provided that the objects of the corporation and the general nature of its business should be the purchase, lease, construction, ownership, maintenance and operation of a system of railways in and around and about the City of Des Moines including the construction, purchase, ownership, maintenance and use of union depots, depots, freight houses, railway shops, repair shops, stock yards, and whatever other things may be useful and convenient for the operation of railways at terminal station, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufacturies, warehouses, elevators or other sources of traffic to each other or any of the railways or depots thereof now constructed or hereafter to be constructed in and around said City of Des Moines, and also to lease terminal facilities to and furnish and perform terminal service for all railways whose lines reach or pass through or near the City of Des Moines and should pos-

sess all the powers conferred upon railway companies by the laws of Iowa, including the power to condemn private property for its use.

3rd. That Article III of the Articles of Incorporation was repealed and stricken out and a new article of the same number adopted and substituted therefor, which provided that the capital stock of the corporation should be Two Million Dollars (\$2,000,000) divided into Twenty-Thousand (20,000) shares of the par value of One Hundred Dollars (\$100.00) each, four thousand (4,000) of which should be issued in payment in part of the purchase price of the terminal property originally acquired by the corporation, it being agreed by the stockholders that the sum of Four Hundred Thousand Dollars (\$400,000) together with the first mortgage bonds theretofore issued for that purpose constituted the fair value of said property when so acquired; that of said Four Thousand (4,000) shares—two thousand (2,000) shares should be issued to the Purchasing Committee of the Original Wabash Company, successor in ownership to the Des Moines & St. Louis Company and the present owner of the property known as the Des Moines & St. Louis Railroad; that one thousand (1,000) shares thereof should be issued to the Northwestern Company, successor to the Des Moines Northwestern Railway Company, and that one thousand (1,000) shares thereof should be issued to the Northern Company, successor to the St. Louis, Des Moines & Northern Railway Company, and said shares were declared to be fully paid by the transfer of the aforesaid property, that the remaining capital stock should only be issued pursuant to a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and should be fully paid either in money or property at its fair market value.

4th. That Article IV of the Articles of Incorporation was repealed and stricken out and a new article of the same number adopted and substituted therefor, which provided that the affairs of the corporation should be managed and its business conducted by a Board of Directors composed of eight persons, who should be elected by the stockholders at their regular annual meeting to be held at the offices of the Company in Des Moines, Iowa, on the first Thursday of January of each year; that it should require the votes of more than seven-eighths of all the stock issued to elect a director; that the Board of Directors should have power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings and to do all such other things as might be proper or necessary for a

corporation to do, but with respect to the matters above mentioned, and all other matters, except the ordinary operation of the property, the Board of Directors could only act upon the unanimous vote of the eight members thereof; that the Board of Directors should annually select an Executive Committee, but that such selection could only be made by the vote of at least seven members and that the duties and powers of such Committees should be defined by by-laws. That the Board of Directors should elect the officers of the corporation and should have the power to enact and publish by-laws, but required that such officers should be elected and such by-laws enacted only by the unanimous vote of the eight members of the Board, and that vacancies occurring in the Board should be filled by the stockholders at a special meeting.

5th. That Article V of the Articles of Incorporation was repealed and stricken out and a new article of the same number adopted and substituted therefor, which provided that the officers of the corporation should be a President, Secretary and Treasurer, to be annually elected from the persons comprising the Board of Directors; that said officers should hold their respective offices for one year and until their successors should be elected and qualified.

6th. That Article IX of the Articles of Incorporation was repealed and stricken out and a new article of the same number adopted and substituted therefor, which provided that the Articles of Incorporation might be amended by the vote of more than seven-eighths of all the stock voting in favor thereof at a meeting of the stockholders of which a notice containing proposed amendment should be mailed to each stockholder at his address as disclosed by the transfer books of the Company.

7th. That five new articles were adopted and added to the Articles of Incorporation, designated as Nos. XI, XII, XIII, XIV, XV. That such new articles, however, only related to special meetings of the stockholders, the conduct of the business and the ratification of the mortgage executed by the Company, dated February 28th, 1887, and that by said Article XV, it was provided that the proceedings of a meeting held December 10th, 1884, with certain preambles including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Company, the Northwestern Company and the Northern Company, consented to by the Original Wabash Company, which appears as a part of the Articles of Incorporation, should be and were thereby repealed, stricken out and expunged from said Articles.

## 15.

And your orators further state that said Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, having made it appear in Article III of said pretended amendments, that 4,000 shares of the capital stock of said Terminal Company were to be immediately issued; that 2,000 of said shares were to be issued to the Wabash Purchasing Committee; 1,000 shares to said Des Moines & Northwestern Railway Company, and 1,000 shares to said St. Louis, Des Moines & Northern Railroad Company, and having also made it appear by said Article III of said pretended amendments that without the payment of any money to said Terminal Company, or the delivery to it of any property, said 4,000 shares should, nevertheless, be issued as fully paid, the defendant Frederick M. Hubbell thereupon, as Secretary of said Terminal Company, proceeded at once to issue said shares accordingly. And your orators state, that having issued 2,000 of said shares as fully paid to said Wabash Purchasing Committee, the said Committee, on his request, immediately transferred 1,500 of said shares to said Frederick M. Hubbell, or to said firm of F. M. Hubbell & Son, said transfer being made in accordance with the contracts and arrangements he, the said Frederick M. Hubbell, had previously made with said Wabash Purchasing Committee; and the said Frederick M. Hubbell, as such Secretary, having issued 1,000 of said shares as fully paid, to said Des Moines & Northwestern Railway Company, the said Des Moines & Northwestern Railway Company on his request, immediately transferred said 1,000 shares to him, the said Frederick M. Hubbell, or to his said firm, said transfer being in accordance with the contract and arrangements he, the said Frederick M. Hubbell, had previously made with said Des Moines & Northwestern Railway Company, of which he was at the time a Director.

And your orators further state, that since the date last aforesaid there has been no change in the relations sustained by defendants, Frederick M. Hubbell or Frederick C. Hubbell, or of the firm of F. M. Hubbell & Son to said terminal properties, or in the stock certificates of said Terminal Company, nor have they, or either of them, since said date, or at any other time, advanced or contributed any money or thing of value to said Terminal Company, or contributed to the expense of acquiring, maintaining, operating or improving said terminals; nor have they, or either of them, at any time since the 8th day of April, 1890, made any investments of money on account of anything contained in said pretended amendments of said Articles of Incorporation, or on account of anything stated in any of the resolutions or contracts hereinbefore referred to as having been adopted or executed on or since said last mentioned date.

And your orators further show, on information and belief, that the statement made in what purports to be Article III of said pretended amendments, to the effect that 2,000 shares of the nominal capital stock of said Terminal Company was then owned by, and should be issued to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company (successors in ownership of the Des Moines & St. Louis Railroad Company, and the then present owner of the property known as the Des Moines & St. Louis Railroad) was inserted, or caused to be inserted, in said pretended amendments by said Frederick M. Hubbell and Frederick C. Hubbell and their confederates knowing said statement was not, and could not, at the time be true.

And your orators state, on like information and belief, that the purpose of said Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, in causing said statement concerning the right of said Purchasing Committee to have 2,000 shares of said nominal capital stock of said Terminal Company issued to it, was to conceal from their co-directors and officers in said Terminal Company, and from their co-directors and officers in said Railroad Companies, the fact that said Frederick M. Hubbell had, prior to said date, secretly bought from said Committee whatever interest said Committee then had, or claimed to have, in 1,500 of said shares (which under said contract of May 10th, 1889, Exhibit P., the St. Louis Company was entitled to receive) and had secretly arranged to have the same transferred by said Committee to himself, as soon as he, the said Frederick M. Hubbell, should, as Secretary of said Terminal Company, issue said stock to said Committee.

And your orators further state, that said Frederick M. Hubbell and Frederick C. Hubbell, having, by their said maneuverings, succeeded in getting fully paid stock certificates for five-eighths of all the issued stock of said Terminal Company issued to themselves without the payment of any money whatsoever on account thereof, and all of which shares they then well knew belonged of right to the Railroad Companies of which they were at the time officers, they now falsely assert and claim, to the injury of your orators, that said pretended amendments of said Articles, as written by them in said record book, were actually made and approved by a vote of more than three-fourths of all the stock of said Terminal Company, and that said pretended amendments are now binding on your orators, when they, the said Frederick M. Hubbell, and Frederick C. Hubbell, both well know that at the date when they caused said pretended amendments to be written in said record book, no stock of said Terminal Company had been issued to anyone; and they also now falsely assert and claim that said Wabash Purchasing Committee was entitled to receive said 2,000 shares of

said stock of said Terminal Company issued to said Committee as aforesaid, when they, the said Frederick M. Hubbell and Frederick C. Hubbell both well knew that said Purchasing Committee neither owned said stock, nor had authority to dispose of the same; they also now falsely assert and claim that the shares of the nominal capital stock of said Terminal Company that had been issued to said Frederick M. Hubbell or to their said firm, as Assignees of said Purchasing Committee, and as Assignees of said Des Moines & Northwestern Railway Company, being five-eighths of all the issued stock of said Terminal Company, was and is fully paid, when they, the said Frederick M. Hubbell and Frederick C. Hubbell, both well know that nothing of value was ever paid or delivered to said Terminal Company on account of said stock.

And your orators further state that by said pretended amendments of said Articles of Incorporation, it was also made to appear that so much of Article II of the Articles of Incorporation of said Terminal Company, as the same were executed and filed on or about December 10th, 1884, as provided that the powers to be exercised by said Company should be in accordance with the terms and spirit of the aforesaid contract entered into on or about the 2nd day of January, A. D. 1882 (Exhibit A), had been cancelled, and was no longer in force.

And your orators further state that said Frederick M. Hubbell and Frederick C. Hubbell now falsely assert and claim, to the irreparable damage and injury of your orators, that by reason of said pretended amendments, the provision in Article II of the Articles of Incorporation of said Terminal Company, that were adopted and filed on or about the 10th day of December, 1884, to the effect that the powers to be exercised by said Terminal Company should be in accordance with the terms and spirit of the aforesaid contract of January 2nd, 1882, has been cancelled, and is no longer in force, and your orators further state that said Frederick M. Hubbell and Frederick C. Hubbell now falsely assert and claim, to the irreparable damage and injury of your orators, that by reason of said pretended amendments, so much of said contract of January 2nd, 1882 (Exhibit A) as provided that your orators were entitled to the use of said terminals in common and in perpetuity, was cancelled, and that the same is no longer binding on said Terminal Company.

16.

And your orators further state that defendants Frederick M. Hubbell and Frederick C. Hubbell caused a preamble and resolutions to be adopted by the Board of Directors of the Des



Moines & St. Louis Railroad Company and written into its record book under date of April 8th, 1890 (being the same date that the record book of the Terminal Company states that said pretended amendments were made to the Articles of Incorporation of the Terminal Company), erroneously reciting that \$400,000.00 of the capital stock of said Terminal Company had been issued, as a part of the purchase price of said Terminal properties; that the Wabash Purchasing Committee had sold said Frederick M. Hubbell one-eighth of the issued capital stock of said Terminal Company and to said G. M. Dodge one-eighth of the issued capital stock of said Terminal Company, and that said sales had been, and were thereby, ratified, confirmed and approved by said Des Moines & St. Louis Railroad Company.

And your orators state that said defendants afterwards caused another preamble and resolution to be adopted by the Board of Directors of the Des Moines & St. Louis Railroad Company, and written into its record book, under date of February 11th, 1891, erroneously reciting that said Wabash Purchasing Committee had sold to Frederick M. Hubbell another one-eighth of the stock of said Terminal Company, of the par value of \$50,000.00, and that said sale by said Committee to said Frederick M. Hubbell was thereby ratified, confirmed and approved by said Des Moines & St. Louis Railroad Company.

And your orators further state on information and belief that said Frederick M. Hubbell and Frederick C. Hubbell, being at the time members of the Boards of Directors of said Des Moines & Northwestern Railway Company, and of said St. Louis, Des Moines & Northern Railway Company, caused like resolutions to be adopted and entered in the record book of both said Companies.

And your orators state, on information and belief, that the chief and real purpose of said Frederick M. Hubbell and Frederick C. Hubbell in causing said preamble and resolutions to be entered in the record book of said Des Moines & St. Louis Railroad Company, was to make it appear on the face of the records of said Company, that defendant Frederick M. Hubbell had acquired, or was acquiring, said stock from said Committee, instead of from said Des Moines & St. Louis Railroad Company, of which he was at the time a Director, when they, the said defendants, at the time well knew that said stock did not belong to said Committee, but would in fact and of right, when issued, belong to said Des Moines & St. Louis Railroad Company, of which he, the said Frederick M. Hubbell, was at the time a Director.

And your orators state, on information and belief, that the chief purpose of said Frederick M. Hubbell and Frederick C.

Hubbell in causing it to be stated in said preamble and resolutions first aforesaid, that one-eighth of the stock of said Terminal Company had been sold by said Purchasing Committee to said Dodge, was to conceal the fact that said Frederick M. Hubbell was getting for himself stock that he, at the time, well knew belonged to said Des Moines & St. Louis Railroad Company, of which he was a Director, by having the same first issued to said Dodge, and afterwards immediately transferred, without consideration, to himself, or to his said firm of F. M. Hubbell & Son.

And your orators further state that your orator the Wabash Railroad Company, and the Des Moines, Northern and Western Railroad Company, which latter Company was then the successor in interest of the Northern Company (the St. Louis, Des Moines & Northern Railway Company) and also of the Northwestern Company (the Des Moines & Northwestern Railway Company), and had become the owner of said Northern and Northwestern lines of railroad and was then operating the same, not having executed said contract of May 10th, 1889, Exhibit "P" hereto attached, O. D. Ashley, as president of said Wabash Railroad Company, and F. M. Hubbell, as president of said Des Moines, Northern & Western Railroad Company, on or about July 31st, 1897, executed a written contract (a copy of which is hereto attached as Exhibit "R") in reality between themselves, but ostensibly with the Terminal Company, for the purpose of showing their succession in interest and title, and to show that they each assumed all the obligations of the original railroad companies (the St. Louis Company, the Northern Company and the Northwestern Company) in and under the contract, made May 10th, 1889, as aforesaid, and set out in Exhibit "P" hereto attached, including the payment of interest on the mortgage bonds that said railroad companies had theretofore caused to be issued in the name of the Terminal Company; the cost of operating and maintaining said terminal properties, and all other charges in connection therewith, all as provided in, and for the full term stated in, said contract of May 10th, 1889.

And your orators further state that defendants Frederick M. Hubbell and Frederick C. Hubbell caused to be inserted in said contract of July 31st, 1897 (Exhibit "R"), a statement to the effect that so much of the contract of May 10th, 1889, (Exhibit "P"), as related to the distribution of the capital stock of said Terminal Company, was no longer binding, and that the capital stock of said Terminal Company, was in fact held as follows, to-wit: By the Purchasing Committee of the Wabash Company, representing the St. Louis Company, 500 shares; by the Des Moines, Northern & Western Railway Com-



pany, 1,000 shares, and by F. M. Hubbell & Son, 2,500 shares.

And your orators further state that the chief purpose of said Frederick M. Hubbell and Frederick C. Hubbell in inserting, or causing to be inserted, in said contract, said statements respecting the ownership of the capital stock of said Terminal Company, and that so much of said contract of May 10th, 1889, as related to the ownership of the capital stock of the Terminal Company was no longer binding, was to give color and support to the claim now set up by defendants to the injury of your orators, to the effect that your orator the Wabash Railroad Company and said Des Moines, Northern & Western Railroad Company thereby intended to and did confirm the issuance of a majority of the stock of the Terminal Company, to-wit, 2,500 shares out of a total of 4,000 shares, to the Hubbells in the name of F. M. Hubbell & Son, as fully paid up stock; and that the railroad companies which then owned, controlled and operated the three lines of railroad as the successors of the three original railroad companies, parties to the contract of January 2nd, 1882, Exhibit "A", and also your orators, through said contract and by reason of the pretended amendments to said Articles of Incorporation of the Terminal Company, and the several resolutions, recitals and statements aforesaid, had in some manner forfeited or relinquished their several rights to use said terminals in common and in perpetuity on the terms provided in said contract of January 2nd, 1882.

And your orators further state that the aforesaid purposes of defendants Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, in inserting said statements, or causing them to be inserted in said contract of July 31st, 1897 (Exhibit "B"), as well as their intention to set up the claims now made by them, were all carefully concealed by said Frederick M. Hubbell and Frederick C. Hubbell from your orators, and also from their co-directors and associate officers of said railroad companies, who had no knowledge thereof.

And your orators further state that defendants Frederick M. Hubbell and Frederick C. Hubbell, and their confederates, having progressed with their said plan to acquire, without payment of any money, valuable properties and property rights from the corporations, of which they were at the time Directors and officers, so far as to make it appear on the face of the record and stock books of said Terminal Company that they had become the owners of five-eighths of all the issued stock of said Terminal Company; and having also so far succeeded in their said plan as to make it appear on the face of the record and stock books of said Terminal Company, that the stock of said Terminal Company, of which they appear to be the owners,

had, without the expenditure of any money by them or anyone else, been issued to them as fully paid; and having also so far succeeded in their said plan as to make it appear on the face of the records of said Terminal Company that its Articles of Incorporation had been so amended by the unanimous vote of all of its stockholders as to repeal and strike out of said Articles the provisions therein requiring all the corporate powers of said Terminal Company to be exercised in accordance with the terms and spirit of said contract of January 2nd, 1882 (Exhibit A); and also in such manner as to make it appear that the contract last aforesaid had been stricken entirely out of the Articles of Incorporation of said Terminal Company, they, the said Frederick M. Hubbell and Frederick C. Hubbell now boldly claim and assert, to the irreparable injury of your orators, that the effect of said pretended amendments of said Articles, and of various resolutions of the Boards of Directors of said Railroad Companies hereinbefore recited, had been to make said Terminal Company not only the apparent, but the real and substantial owner of said terminal properties in such way as will entitle said Terminal Company to deprive your orators, their successors and assigns, of the rights secured to them, and each of them, to use said terminal properties in common and in perpetuity, on the terms stated and reserved to them in said contract of January 2nd, 1882; and also in such way as to make said Terminal Company a corporation for pecuniary profit, and entitle it to exact a rental from your orators, and their assigns, for the use of said terminals, sufficient to pay dividends on said nominal capital stock, the Certificates for which they, the said Frederick M. Hubbell and Frederick C. Hubbell have heretofore acquired in the manner hereinbefore stated. And they also now assert, to the injury of your orators, that from and after the expiration of said contract of May 10th, 1889, (Exhibit P), to-wit, from and after May 1st, 1918, your orators will have no right to use said terminal properties excepting on such terms, for such compensation and under such regulations as may be consented to by said Terminal Company, and they also now claim and assert to the injury of your orators, that by reason of the statement made in Article III of said pretended amendments to the Articles of Incorporation of said Terminal Company, to the effect that the sum of \$400,000.00, together with the first mortgage bonds theretofore issued constituted the fair value of said Terminal properties when the same were acquired, as hereinbefore stated, was to make the said stock now held by them, fully paid and non-assessable.

Your orators further state that the lease, hereinbefore referred to as having been executed by the Des Moines & St.

Louis Railroad Company, to the Wabash, St. Louis and Pacific Railway Company, was executed and delivered on or about the first day of March, 1882, and thereby said Des Moines & St. Louis Railroad Company, leased and demised to said Wabash, St. Louis and Pacific Railway Company, in perpetuity its right of way and railroad extending from the City of Des Moines in the State of Iowa, to Albia, in said State, together with all its real estate, embankments, bridges, buildings, tools and all its railroad property, acquired, or to be acquired, and everything appurtenant to said railroad or used in connection therewith, which demise included the right of said Des Moines & St. Louis Railroad Company to use the aforesaid terminal properties in said City of Des Moines, in perpetuity and in common with said other railroad companies, as provided in said contract of January 2nd, 1882, hereto attached as Exhibit A.

Your orators further state that by its deed, duly executed and delivered on or about the 25th day of April, 1888, said Wabash, St. Louis and Pacific Railway Company sold, assigned, transferred and conveyed to said Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, all its property, rights, interest and choses in action, acquired by it, the said Wabash, St. Louis & Pacific Railway Company, after the first day of June, 1880, which conveyance included all the rights and interest of said Wabash, St. Louis & Pacific Railway Company in and to said Des Moines & St. Louis Railroad, and its appurtenances.

And your orators further state, that on or about the 15th day of April, 18... said Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, as Trustee, acquired by assignment from said Wabash, St. Louis & Pacific Railway Company all the capital stock of said Des Moines & St. Louis Railroad Company.

And your orators further state that said Purchasing Committee had, during or prior to the year 1889, by purchase at foreclosure sale or otherwise, as herein stated, acquired, as Trustees for the holders of certain bonds of the Wabash, St. Louis & Pacific Railway Company (secured by mortgage of [dated] June 1st, 1880) all the railroads and properties of said Wabash, St. Louis & Pacific Railway Company, in all the states first herein mentioned; and thereupon, in the year 1889, said Purchasing Committee organized, or caused to be organized, separate railroad companies in each of said states, and immediately afterwards said Committee as such Trustees conveyed to said companies all the railroads and properties situated in the several States in which said Companies were respectively organized.

And your orators further state, that immediately afterwards, to wit in said year 1889, said Purchasing Committee caused all said Railroad Companies to be consolidated as and under the name of your orator, the Wabash Railroad Company; and immediately afterwards, in the year last aforesaid, said Purchasing Committee as such trustees conveyed to your orator, the Wabash Railroad Company, all the rights and interests of said Purchasing Committee in all said properties, rights and franchises not theretofore conveyed to said separate companies, including all the rights and interests of said Purchasing Committee in said Des Moines & St. Louis Railroad and also its rights in the capital stock of said Des Moines & St. Louis Railroad Company.

"And your orators further state that afterwards, in the year 1890, said Des Moines & St. Louis Railroad Company, for a good and valuable consideration, executed and delivered unto you orator the Wabash Railroad Company, its deed of conveyance whereby said Des Moines & St. Louis Railroad Company granted and assigned unto your orator, the Wabash Railroad Company and its successors and assigns for ever, all the line of railroad and right of way of said Des Moines & St. Louis Railroad Company in the State of Iowa, commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the counties of Polk, Marion & Monroe, to the Town or City of Albia, in Monroe County in said State, together with all its right of way, real estate, side tracks, yards, depots, turn-tables, lands, buildings and furniture, and also all its rights, privileges and franchises, and all other things, real and personal, owned or used by said Des Moines and St. Louis Railroad Company, in connection with the line of railroad above described, and especially including all the rights and leasehold and other interest of the Des Moines and St. Louis Railroad Company, under a contract dated May 10, 1889, between the Des Moines Union Railway Company, of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company of the second part."

## 19.

Your orators further represent and state that during the month of December, 1891 the Des Moines & Northern Railway Company had by purchase and sale become the owner of the Northern line of railroad running from Des Moines to Boone, and was in possession of and operating the same as the successor in interest and title to all the property, rights, and franchises of the Northern Company; and the Des Moines & North-

western Railway Company had, by purchase, sale and transfer, become the owner and was in possession of and operating the Northwestern line of railroad running from Des Moines northwesterly and then completed to the town of Fonda, in Pocahontas County, Iowa, and had succeeded to and acquired all the rights, franchises and privileges of the Northwestern Company; and thereupon, by consolidation agreement under the laws of Iowa, the said two corporations then owning and operating said two lines of railroad as aforesaid, were consolidated under the name of the Des Moines Northern & Western Railway Company, which new corporation will be hereinafter called the Northern & Western Railway Company.

That afterwards, to-wit, during the year . . . , your orator the Chicago, Milwaukee & St. Paul Railway Company became the owner and took possession of both said Northern and said Northwestern lines, having become the successor in interest and title of said Northern & Western Railway Company, and of its property, rights, and franchises, as is hereinafter more fully and in detail stated, to-wit: On the 15th day of March, A. D. 1894, Frederick M. Huddell, individually, and the said firm of the defendants, F. M. Huddell & Son, owned and held 32,000 shares out of a total issue of 42,000 shares of \$100.00 each, of the capital stock of the said Des Moines Northern & Western Railway Company, and also owned and held \$2,005,000 out of a total issue of \$2,770,000 of the first mortgage bonds of said Des Moines Northern & Western Railway Company, which said company then owned and operated the line to Boone, Iowa (the Northern line), and the line to Fonda, Iowa (the Northwestern line), and was the successor in interest and title of the original Northern Company and the original Northwestern Company.

That on said date the Huddells entered into a written contract with your orator the Chicago, Milwaukee & St. Paul Railway Company (hereinafter called the Milwaukee Company), a copy of which contract is hereto attached, marked Exhibit "A", and made a part hereof. That in said contract the said Huddells sold and obligated themselves to transfer and deliver to the Milwaukee Company 16,800 shares of the capital stock of the Des Moines Northern & Western Railway Company, and gave to said Milwaukee Company an option on, and the right and privilege of purchasing from said Huddells a further block of 6,468 shares of the stock of the Des Moines Northern & Western Railway Company, provided the Milwaukee Company would exercise such right and privilege of purchasing on any day after the first day of January 1897, and before twelve o'clock noon of the first Monday in April in the year 1899; that the said 16,800 shares above mentioned were sold and agreed to be delivered for a valuable and valid consideration moving at the date of said contract, and the addi-

tional 6,468 shares were for a consideration of \$46,200, to be paid in money by the Milwaukee Company to the defendants Frederick M. Hubbell and F. M. Hubbell & Son, as co-partners, at the time of exercising said option; that in said contract Frederick M. Hubbell and F. M. Hubbell & Son also agreed, among other things, to bring about a reduction of the interest on the outstanding bonds from five per cent. to a rate not higher than four per cent. per annum from and after April 1st, 1897, and it was agreed that in case said Hubbells could not secure such reduction of interest rate, they would cause proceedings to be instituted to foreclose the mortgage securing said bonds and would organize a new company to take over the property covered by the mortgage, and all property, rights, privileges and franchises of every name and description then belonging to or enjoyed by said Des Moines Northern & Western Railway Company; that said new company should have a capital stock not exceeding in par value the mortgage indebtedness of said Company more than fifty per cent. and that its mortgage debt should carry interest at not more than four per cent per annum, the principal not to exceed in amount the then outstanding bonds of said Des Moines Northern & Western Railway Company, with interest to the date of the organization of the new company, and the costs and expense of foreclosure and that fifty-five and four-tenths (55.4) per cent. of all the stock in said new company should be issued to the Milwaukee Company or to the trustee named in said contract, to be held by him for it as it might become entitled to receive the same under said contract.

That thereafter the Hubbells professing themselves to be unable to secure the consent of all the bondholders to accept a reduction of the interest on the bonds from five to four per cent., as required of them in said contract, they, with the consent of your orator the Milwaukee Company, caused suit to be instituted by the trustee in said mortgage to foreclose the same; and thereafter, to-wit, on or about the fifth day of March A. D. 1895, under such foreclosure proceedings, the Des Moines Northern & Western Railroad Company, a new corporation, was organized by said Hubbells, and under and through said foreclosure proceedings said new corporation took over all the property, rights and franchises of said Northern & Western Railway Company (said new company being hereinafter called the Northern & Western Railroad Company).

That a part of the scheme and plan of such transfer was that stock should be issued in the new company to the parties who held or were entitled to the stock of the old company in the same proportion; and said Milwaukee Company surrendered

its stock in the old company for stock in the same proportion in the new company, and the Hubbells from time to time, as required in their said contract, delivered and assigned stock in the new company, amounting to fifty-five and four-tenths per cent. of all the stock issued or outstanding, to the Milwaukee Company, and subsequently the Hubbells also transferred the remainder of their stock in the new company to said Milwaukee Company.

That the said Hubbells also sold and transferred to the Milwaukee Company all the bonds of the new company held by them, or either of them amounting in all to about \$2,500,000 par value, and subsequently, to-wit, about February, 1899, the Northern & Western Railroad Company assigned, transferred and conveyed to your orator the Milwaukee Company all its right, title and interest in and to the two lines of railroad, and the property, rights and franchises which it had acquired from said Northern & Western Railway Company; and your said orator soon thereafter took possession of the said two lines of railroad, to-wit, the Northern and Northwestern, and has since then held and operated the same.

And your orators further show, that ever since the transfers of possession, conveyances and considerations hereinbefore and hereinafter stated, your orators have always been and are now recognized by the defendants as having succeeded fully to all the property, rights, interest and privileges of the parties to the original contract of January 2nd, 1882 (Exhibit A), and as having succeeded to the property, rights and privileges of the corporations designated as parties of the second part in said contract of May 10, 1889 (Exhibit P), and are now using the terminal properties under said last named contract, except as hereinafter stated.

Your orators further show, that by the terms of said contracts of January 2, 1882, (Exhibit A), and May 10, 1889, (Exhibit P), the railroad companies named therein, and their assigns were required to pay and have paid the entire purchase price of said terminal properties all taxes that have been levied on said terminals; the cost of all insurance thereon; all interest on the mortgage bonds issued by said Terminal Company; all sums of money that have been expended improving, maintaining, repairing and operating said terminal property; the entire cost of all labor, material and equipment used or employed in switching and handling the traffic and cars of other persons and corporations over said terminals for hire; all sums that have been expended on account of injuries to persons or property in the operation and use of said terminals, and that neither said Terminal Company, nor any stock-



holder thereof has ever at any time paid or in any way contributed any money, or thing of value, on account of the purchase, improvement, maintenance, operation or repair of said terminal properties, or any part thereof, or on account of taxes, insurance or interest on the mortgage bonds of said Terminal Company. Nor has any stockholder of said Terminal Company paid to said corporation, or into its treasury any money, or delivered to said Terminal Company any property or thing of value, on account of any shares of stock heretofore issued to, or now held by him, or them, in said corporation, or on any other account—and that no part of said capital stock was ever subscribed for by any person whomsoever.

## 20.

And your orators represent and show to the court that after the making of the said contract with your orator the Milwaukee Company on March 15th, A. D. 1894 (Exhibit "Q" attached to this Bill) said Frederick M. Hubbell was the president and executive and managing officer of the Des Moines Northern & Western Railway Company, continuously until now; and that upon the organization of the new company, the Des Moines Northern & Western Railroad Company, he was the acting president and executive officer and in full control and management of all the affairs of said last named Company; and during all the time that your orator the Milwaukee Company was interested in the property and stock of the said two railroad companies or either of them, he was entrusted by it in the management of the railroad property and in the conservation of the interests of the Companies of which he was president, as aforesaid; that your orator the Milwaukee Company trusted him fully in connection with his son and co-defendant, Frederick C. Hubbell, in the conservation of the property interests of said two corporations, and relied upon their good faith toward your orator in caring for and conserving the property and corporation interests which they were then transferring and selling to your orator the Milwaukee Company.

And your orator, the Milwaukee Company, avers and shows to the court, that the signing of the contract or agreement of July 31st, 1897 (Exhibit "R") by the defendant Frederick M. Hubbell as president, and A. N. Denman as secretary of the Des Moines Northern & Western Railroad Company was in fraud of the rights of your orator the Milwaukee Company, in so far as it attempted to give the consent of the Northern & Western Railroad Company to the transfer of said block of 2,500 shares of stock in the Terminal Company from the Railroad Company to F. M. Hubbell & Son or to the Hubbells, and



that the signing and executing of said contract by Frederick M. Hubbell as president of said Northern & Western Railroad Company, and by A. N. Denman, as secretary of said company, the said Denman being then a confidential clerk and employe generally of said Frederick M. Hubbell, and controlled by him, was a fraud upon the rights of the Milwaukee Company, and in equity and good conscience said contract should be set aside and held for naught as between the Hubbells and the Milwaukee Company, so far as it relates to said stock and the right of said Hubbells to hold and control the same.

And your orator the Milwaukee Company further avers, and shows to the court, that said 2,500 shares of stock now claimed by the Hubbells to belong to them was taken out of the treasury of the Northern & Western Railway Company and transferred to themselves for a mere nominal sum, the exact amount of which is to your orator unknown. And your orator the Milwaukee Company hereby offers to return to the Hubbells, or either of them, or to F. M. Hubbell & Son, any and all amounts that may have been paid by them or either of them, or that may have been by them or either of them turned into the treasury of said Northern & Western Railway Company, at any time, for or in consideration of said transfer of said stock to themselves, together with annual interest thereon; and your orator, the Milwaukee Company, now offers to do and perform any and everything in the premises which the court may deem equitable and just in that regard, or in the premises or as the court may require.

21.

Your orators further represent and show that the Terminal Company had now issued and outstanding of its nominal capital stock four thousand (4,000) shares issued as aforesaid; that of said shares the defendants Frederick M. Hubbell and Frederick C. Hubbell, in the firm name of F. M. Hubbell & Son, hold certificates for two thousand five hundred (2,500) of such shares, acquired as aforesaid, your orator the Wabash Railroad Company holds certificates for five hundred (500) of such shares, and your orator the Chicago, Milwaukee & St. Paul Railway Company, holds certificates for one thousand (1,000) of such shares, that the defendants the Hubbells, by means of their said shares, which constitute a majority, have pretended to elect themselves and H. D. Thompson, a son-in-law, and Grover C. Hubbell, a son of said Frederick M. Hubbell, and N. T. Guernsey, their private and general attorney, their nominees and subordinates, as directors of the Terminal Company, and now constitute a majority of the acting Board of Directors of said Terminal Company.

## 22.

Your orators further represent and show that defendants Hubbells early in the year 1906 set up a claim, and together with their associate directors who were and are controlled by them, caused the Terminal Company to set up a claim, and they and said company now make the claim, that your orators and each of them have been deprived of the right reserved by and secured to them under said contract of January 2, 1882, to use in perpetuity the said terminal facilities and property as and on the terms stated in said contract, and that the Terminal Company now owns and holds said terminal facilities and property free from the right of your orators to use said terminal facilities and property as and on the terms provided in said contract of January 2, 1882; that the Terminal Company now has the right to sell, mortgage, and lease said property to any corporation whatsoever, subject only to said contract dated May 10, 1889, and that at the expiration of said contract it will have the right to wholly exclude your orators from said terminal facilities and property, and that if your orators are permitted by it to use said terminal facilities and property, they must do so in the manner, on the terms and for such period of time as the Terminal Company may prescribe.

Your orators further state and show to the Court that the defendants the Hubbells, and associate directors, now dominating and controlling the Terminal Company, have themselves threatened, and are now threatening and have caused the Terminal Company to threaten to mortgage said terminal facilities and property and to lease the same for a long term of years to railroad companies other than your orators, and unless restrained by this Honorable Court, will carry out such threats and thereby cast a cloud on the title of your orators to the use of said terminal facilities and property and the right to use the same in perpetuity as provided in said contract, dated January 2, 1882, and said original Articles of Incorporation as and on the terms therein stated.

## 23.

Your orators further represent and show to the Court that they have heretofore at great expense, to-wit, the expenditure of millions of dollars, constructed or acquired and now own in the States of Iowa, Illinois and Missouri, long lines of railroad which were constructed for the sole purpose of reaching to and into the City of Des Moines and there receiving and delivering traffic as common carriers for the benefit and advantage of said City and all the inhabitants thereof; and the public generally; that unless the defendants be enjoined and restrained by this Honorable Court from executing such

threats and from their unlawful purpose to cast a cloud on your orator's said right and title to use in perpetuity said terminal facilities and property as aforesaid, the credit of your orators will be injured and the value of your orator's lines of railway aforesaid, extending from various points in the States of Illinois, Missouri and other states to the said City of Des Moines, will be greatly depreciated to the irreparable damage of your orators and each of them. Your orators further show to the Court that the defendants the Hubbells, and their said associate directors, who dominate the Terminal Company as aforesaid, have caused the Terminal Company to divert and invest the money of your orators derived from rentals and services rendered other companies and persons, at the cost of your orators, in switching and handling their cars and traffic, and in the use and operation of said terminal facilities and property, and to invest such money in real estate and other property which it causes to be conveyed to itself in fee simple and in such manner as to indicate that it is the absolute owner thereof; and defendant Hubbells and their said associate directors are threatening and have caused the Terminal Company to threaten to continue to so divert and invest such earnings and to claim and appropriate the earnings on said property so acquired; and to sell, mortgage or lease such property so acquired, and that unless restrained by this Honorable Court, the Terminal Company, will execute such threat, and sell, mortgage or lease such property, which in equity and good conscience belongs to your orators, to their irreparable damage.

## 24.

And your orators further show that the Terminal Company and its said Directors controlling it now claim to have the right in their discretion to select without the consent of your orators an Executive Committee contrary to the provisions of said contract, dated May 10, 1889, wherein it is provided that the Directors of the Des Moines Union Railway Company shall appoint an executive committee as hereinbefore stated. That by the contract of May 10th, 1889, the companies owning the three railroads obligated themselves to use the terminal properties for a period of thirty years and to pay every debt and obligation contracted in the operation and maintenance of said terminals; and said contract of May 10th, 1889, provided that the directors of the Terminal Company should appoint an executive of three, composed of one representative of each railroad, but that the directors of the Terminal Company refused to appoint such committee although frequently requested by your orators so to do, and unless the defendants

be directed and required by appropriate orders of this Court to specifically perform said provision of said contract, dated May 10, 1889, and appoint an executive committee composed of three members to be designated by your orator, your orators will be prevented, to their irreparable damage, from supervising the operation and maintenance of said terminal facilities and property in an economical manner and so as to afford the greatest efficiency in the use and operation of said property.

That although the Union Depot building was to be erected for the sole use and benefit of the proprietary railroad companies, the defendant, Frederick C. Hubbell, has taken possession of a large part of said building, and has usurped the entire control of the superintendent and his assistants and of the auditor and clerks, as completely as though he were the private owner of the said building and property; that he has rented, leased or let the major part of the said building for the private benefit of the defendant corporation, the Terminal Company, and has excluded your orators from said entire building, except the waiting room and toilet rooms or water closets, except as hereinafter stated in the second division of this Bill, as to rooms for which one of your orators is charged rent.

## 25.

And your orators further represent and show to the Court that after the St. Louis Company had been organized as a corporation, and after it had announced its purpose of constructing a railroad from Albia to Des Moines, and while it was engaged in the preparatory or preliminary work of construction, much property in the way of right of way was donated and given or conveyed to it in the construction of said lines; and that franchises or licenses to occupy streets and alleys in the City of Des Moines and other cities and towns along the line were given to it, and land was condemned for right of way purposes all along the line, including that within the City of Des Moines. That the same was and is true of the line of the Northwestern Company to Fonda, and of the line of the Northern Company to Boone, along each of which lines a large amount of taxes were also voted in the various townships and municipalities, such taxes being voted on condition of the building of each of said lines into the City of Des Moines, and such building was an inducement to the public to thus aid in the construction of the said three lines of railroad so that said lines of railroad would be constructed and operated to and from a suitable place in the City of Des Moines.

That about the time of the making of the written contract of January 2nd, 1882, set out in Exhibit "A" hercof, the railroad

companies, parties thereto, permanently located and established, for their common use, a passenger station between Fifth and Sixth Streets in the City of Des Moines, and located and established their freight stations and depots immediately to the west of Sixth Street, and said location was then, and has ever since then continued to be the most suitable and proper place for the same, it being in the center of the city, near the business portion thereof, and in the immediate vicinity of the passenger and freight depots of all the railroads in Des Moines, except one, and such place is remarkably well calculated to serve the public interests at Des Moines. That at the time of the building of the said lines of railroad the City of Des Moines was the capital of the State of Iowa, with a population of more than 50,000, and was the most important and promising city in Iowa; that it now has a population of about 100,000, and is a very important commercial center; that from the said passenger and freight depots to the eastern limits of the City of Des Moines is about . . . . . miles, and to Farnham street in West Des Moines is about . . . . . miles. That to deprive the railroad corporations that originally located, established and built the said passenger and freight depots and lines of railway to them, as well as their successors in interest, or to deprive your orators of the free and unrestricted use of said lines of railroad within the City of Des Moines as secured to them and each of them in perpetuity in and by said contract of January 2nd, 1882 (Exhibit "A"), and of the said passenger and freight stations, would be to dismember the said lines of railroad, and to practically exclude the party, or parties, operating them, from the City of Des Moines; and would be a dismembering of the several lines of railroad as originally located and built, and would hinder and prevent the several corporations from discharging their duties to the public as common carriers, and as required by the charters under which said lines were located and built. And to so dismember said lines of railroad and to exclude your orators from said city, or to deny to them, or either of them, the use of the tracks, depot and freight buildings, or stations, as secured to them in and by said contract of January 2nd, 1882, would be contrary to public policy.

26.

And your orators further represent and show to the Court that the defendants Frederick M. Hubbell, Frederick C. Hubbell and the firm of F. M. Hubbell & Son, had at all times full and complete knowledge of each and every one of the facts and transactions hereinbefore recited or set out; and that the said Frederick M. Hubbell was one of the promoters of the entire enterprise from its inception, and continued to be such through all the foregoing transactions. That he was one of

the officers of the St. Louis Company, and of the Northwestern Company, and of the Northern Company and took part in each and all of the aforesaid transactions so far as relates to the doings of the St. Louis Company, the Northwestern Company, the Northern Company, and the Terminal Company; and that Frederick C. Hubbell, being the son of the said Frederick M. Hubbell, and the other member of the firm of F. M. Hubbell & Son, also had at all times such notice and knowledge, although not connected with either of the corporations in an official way until in . . . . ., when he was elected president of the Terminal Company, and on the . . . . day of . . . . when he was elected director of the Northwestern Company.

27.

And your orators further represent and show that the Terminal Company accepted a conveyance of said terminal property subject to the joint use of said three railroad companies in common, upon the terms stated in said contract of January 2nd, 1882 (Exhibit "A" heresoft), and with the apparent and avowed purpose on its part to hold and manage the same under and according to the terms of said contract, and to carry out the same; wherefore, in equity and good conscience said Terminal Company, defendant corporation, should be held to a full performance of said contract of January 2nd, 1882, after May 1st, 1918, after the contract of May 10th, 1889, will be no longer effective.

Division Two.

28.

And your orators further complain of the defendants, and as a ground for further and additional relief, represent and show to the court;

That in the said supplemental terminal contract of May 10th, 1889, a copy of which is set out in Exhibit "I" attached to this Bill and made a part hereof, it was agreed and provided that the defendant corporation should erect and furnish for the use of the three railroad companies, a Union Passenger Depot, and additional switches, sidings, freight depots, round houses, shops, water tanks, and yard appurtenances and that it should acquire the necessary additional grounds therefor. And it was also explicitly agreed and provided in said contract, more particularly in section six thereof, that the defendant corporation should switch all cars and handle all freight which might be delivered to it, or which might come upon its said premises insofar as either of said three railroad companies might request it so to do; that the entire property or terminal facilities, including buildings, should be in charge of a superintendent, who was to be appointed by the executive committee, being one from

each of the three railroad companies as hereinbefore stated, subject to the approval of the directors of the defendant corporation, and that each of the three railroad companies should use the said terminal property for all its passenger trains destined to or departing from said City of Des Moines, and should use said terminal properties for all its trains, unless otherwise expressly permitted by the said executive committee; and it was also stipulated and provided that the covenants, conditions and stipulations in the said contract should govern and be mutually binding upon all parties thereto, their successor, successors and assigns, severally, for the term of thirty years from May 1st, 1888. That among other things, it was also agreed therein that the three railroad companies should pay, and they have at all times heretofore paid, as hereinbefore stated, interest on the mortgage bonds of the defendant corporation, and the expense of maintaining and repairing the property, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., and the taxes, general or special, and all costs and expenses of every nature connected with the operation of the said terminal property, less any sum or sums received from other railroad companies in the way of rent for the use of said property, or parts thereof, and that such expenses or costs to the said three railroad companies should be apportioned among them according to the wherelage of each.

29.

And your orators further show to the Court that soon after the terminal contract of May 10th, 1889, set out in Exhibit "I" hereto, was made, the defendant corporation began to lease and let to third or outside parties some of the buildings or parts of buildings that were upon the terminal property, and let or granted certain privileges to certain third or outside parties in the Depot building, and in other parts of the terminal property, from which there was realized from time to time a considerable revenue as rental and license fees; and as industries sprang up along the railroad lines or tracks of said terminal property, and said lines were extended to other industries, cars belonging to other railroad companies were switched over the said tracks, for which switching charge was made, exacted and collected by the defendant corporation. That the parties to said terminal contract, in form of lease Exhibit "I", hereinbefore last referred to, all understood and construed the same to mean that such earnings from rents and privileges, and from switching charges, should enter into the account for operating expenses of the Terminal Company, and should be credited upon the cost of such operating for the benefit of the three constituent railroad companies, parties of the second part to said last named supplemental contract. That pursuant to



said understanding and construction of said supplemental contract, the revenue or income derived from said sources, to-wit, from rents for property and for privileges or license fees, and for switching charges, were each month credited upon the monthly accounts of the said railroad companies, and such income or revenue was used to reduce the monthly account of the Terminal Company for expense of operating and maintaining the said terminal property; and that for the purpose of carrying out the spirit and intent of the said contract of May 10th, 1889, and to set at rest any doubt in regard to its construction for the future, the board of directors of the defendant corporation, at a meeting on February 11, 1891, by resolution made the following order, to-wit:

"It is ordered that the rents collected for the use of the Company's real estate, and the switching charges paid in, be credited on the bills of the different tenant companies occupying this Company's terminals, giving to each company its share ascertained by wherelage."

And the practice which had theretofore obtained as hereinbefore stated in reference to such earnings for the use of ground or buildings, or for switching cars of other railroads over the said terminal property was continued to be credited to operating expenses for the benefit of the parties of the second part to said contract of May 10th, 1889, or their successors in interest.

That afterwards, to-wit, on January 7th, 1892, at a meeting of the said Board of Directors of the defendant corporation (the defendants F. M. Hubbell and F. C. Hubbell, again being present as directors), the following resolution was adopted by the unanimous vote of all the members of the said board, to-wit:

"Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenues from the tenant companies;

Therefore, Be It Resolved: That until the further action of the Board, the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purposes."

That at the time of this last action of the Board of Directors of the Terminal Company, to-wit, on January 7th, 1892, the need of a working fund or cash capital with which to purchase supplies, as stated in the said resolution, was apparent and pressing, and the proprietary railway companies, having up to



that time been obliged to advance or furnish supplies to the defendant corporation, from time to time, to enable it to maintain and operate said terminal property pending settlement at the end of each month, were willing to allow such rents and switching charges, or the proceeds thereof, to accumulate in the hands of the Terminal Company to an amount sufficient for such working fund, and therefore acquiesced in this action of the directors of the defendant corporation. But your orators further represent and show to the Court that the sum of twenty-five thousand dollars (\$25,000.00) would be and is an ample fund, and will meet all the needs of the Terminal Company, as a cash capital for the purposes expressed in the said resolution last set out herein. But your orators charge and show to the Court that the fund arising from such rents and privileges or license fees, and from such switching charges, now amount to a sum very largely in excess of twenty-five thousand dollars (\$25,000.00), and as your orators believe, and charge the fact to be, that on June 30, 1908, the fund so withheld from your orators amounted to \$457,680.89.

31.

And your orators further state and show to the Court that when making the supplemental terminal contract of May 10, 1889 (set out as Exhibit "F" in this bill), the parties thereto recognized and contemplated that circumstances and conditions would arise in the operating and management of the terminal property that were not then foreseen or anticipated in the contract as written, and therefore they explicitly provided in said contract to-wit, in section twenty-eight thereof, that such matters should be dealt with and disposed of upon the principles of justice and equity from the standpoint of railroad operating and management; and it was in said contract, to-wit, in section twenty-eight thereof, agreed and provided that any differences that might arise between the parties over such matters might be referred to arbitration by men experienced in railroad management who should "determine what would be just and equitable for each of said parties to do in and about the matter in dispute."

That your orator, the Wabash Railroad Company, accepted the aforesaid resolutions of the Board of Directors of the Terminal Company hereinbefore set out, to-wit, that adopted on February 11, 1891, and that adopted January 7th, 1892, as an amicable adjustment of the matter of earnings from rents and privileges and switching, and acquiesced in the disposition apparently made of the matter, by said two resolutions. And that your orator, the Chicago, Milwaukee & St. Paul Railway Company, in purchasing an interest in the Des Moines, Northern & Western Railway Company, during the year 1894, and

afterwards in purchasing and taking over the entire property from its successor, the Des Moines, Northern & Western Railroad Company, as heretofore set out, also relied upon the said two resolutions as having disposed of the matter and relied upon their being carried out in good faith, and it acquired the property in the belief that the said earnings or fund, after a sufficient sum had been accumulated to meet the wants and needs of the Terminal Company for a working fund as expressed in said last resolution, would then be applied to the reducing of the expense for operating and maintaining the property under the said supplemental terminal contract (Exhibit "I"), and would go to the credit of your orators each month in due proportion.

32.

And your orators further represent and show to the Court that the defendants Frederick M. Huddell and Frederick C. Huddell, being in possession of, and being the apparent holders of a majority of the stock of the Terminal Company, have annually, and for the last five years, insisted upon a majority of the board of directors of the defendant corporation being elected in their interest, and when they parted with all interest in the proprietary companies more than five years ago they had on said board five out of eight members in their personal interest, to-wit, themselves, and three others who were either the attorney, or near relatives or employees of the defendants, Frederick M. Huddell and Frederick C. Huddell. That through the said 2,500 shares of stock they have ever since then retained themselves and their said allies on said board, each and all of whom have always been, and now are, absolutely and completely under the control of the said Huddells, as heretofore stated, and are entirely subservient to the interests of the said Huddells; and, notwithstanding your orators have repeatedly, orally and in writing, made demand on said Huddells and the Board of Directors and officers of the defendant, the Terminal Company, to pay or credit the said money or fund now in their hands arising from such switching charges, rents and privileges or license fees, exceeding \$25,000.00, in their monthly accounts to your orators in accordance with the foregoing resolutions of February 11th, 1891, and January 7th, 1892, and that each of your orators on the 12th day of March, 1906, made formal written demand upon the defendants that said income and earnings in excess of \$25,000.00 be credited upon the bills against your orators, respectively, on said wheelage basis, but that said defendant company, and the defendants, the Huddells, then and there refused, and still refuse to pay or credit to your orators, or either of them, any part of said earnings, income or receipts, and the defendants further likewise refused, and continue to refuse, to request the Trustee in said mortgage of

November 1st, 1887, to certify and issue the remaining unissued bonds secured by said mortgage, in accordance with Section 27 of said contract of May 10th, 1889, and apply the same to the reimbursement of your orators for the portions of said surplus earnings (being the proceeds of switching charges, rents, and license fees for privileges heretofore referred to), temporarily applied to the purchase of additional terminal properties and the making of additional improvements. But the defendants refused to do so, and deny that your orators have any right to have any of said bonds issued or applied to the aforesaid purposes.

33.

And your orators further show that notwithstanding the facts are as heretofore set forth, said defendant company and the defendants, Frederick M. Hubbell and Frederick C. Hubbell, now deny that the said Terminal Company holds and operates said terminal properties as agent for your orators, and deny that your orators are entitled to the surplus earnings arising as above described, or to the benefits of the same; but on the contrary claim that the Terminal Company defendant is the owner of all said terminal properties in its own right, and entitled to receive and retain in its own right the said surplus earnings aforesaid, free from any right or claim upon the part of your orators or either of them; that said defendants threaten to appropriate said surplus earnings to their own use, and to other unlawful uses, and have actually taken steps toward carrying out such unlawful purposes; that on the 12th day of March 1905, at a meeting held by the Board of Directors of the Terminal Company in said City of Des Moines, the said Hubbells and their three other associates upon the Board of Directors, voted to allow additional salaries as follows, namely: To the defendant Frederick C. Hubbell as president of the company for the years 1901, 1902, 1903, 1904, and 1905, \$37,500; and to the defendant Frederick M. Hubbell, as secretary of the company, for the same years, the sum of \$12,500.00, notwithstanding that no services would be required of the president if the defendants appointed the executive committee as your orators desire, and as heretofore claimed should be done, and if the defendants allowed such executive committee to superintend and direct the management of the property according to the terms of said supplemental contract of May 10th, 1889, set out in Exhibit "F"; and the work of the defendant Frederick M. Hubbell, as secretary, amounts to but a few hours each year. And your orators say that said defendants, unless restrained by this Court, will not only appropriate the said sums of money to themselves out of the aforesaid earnings and rents belonging to your orators, but will apply the remainder to the unauthorized pur-

chase of additional properties, and the making of improvements, for the purpose of giving value to the stock of the Terminal Company, and thereby furthering the unlawful schemes of defendants, Frederick M. Hubbell, and Frederick C. Hubbell, at the cost and expense of your orators, all of which claims, acts and doings on the part of the defendants are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises.

## 34.

And your orators further represent and show to the Court that the entire cost of producing such earnings falls upon your orators in that all switching of cars over the terminal property for other railroad companies, has always been, and is now being done by engines, appliances and equipment, the original cost of which was borne by your orators, and the work is being done by employees whose wages are paid by your orators, and under superintendence and management, the entire expense of which is charged to and paid by your orators; every item of expense for equipment, fuel, oil, supplies of any kind, repairs, labor management, and all expenses made by or growing out of the doing of said work of switching or handling cars, or for repairs on and care for buildings, including insurance, from which a revenue is derived by the defendant corporation, or being charged to your orators by the said defendants in the making up of the monthly accounts under the terminal contract, and, further, your orators are charged in said monthly accounts with the interest on the bonds of the corporation defendant, which bonds cover the entire cost of the entire terminal property, including extensions, additions and betterments, except insofar as such costs have been paid out of the earnings from switching services and rents as aforesaid, the exact amount of which your orators are unable to give. The monthly charges against your orators also include the entire cost of maintaining, repairing, operating, superintending and managing the entire property of the Terminal Company.

## 35.

That heretofore from time to time the defendants, the Hubbells, by reason of their usurpation of all the powers of the executive committee and controlling the auditing officers and the treasurer of the Terminal Company, the last being a near relative and an employe of the said Hubbells, large sums have been taken from the said earnings for switching charges, rents, and license fees, and paid out for improvements, extensions and additional equipment, which said extensions additional improvements and equipment should properly have been charged to capital account, the precise amounts of which your

orators are unable now to give, but are informed and believe that the amount so diverted up to June 30, 1908, was \$242,744.18.

## 36.

And your orators further represent and show to the Court that all the receipts arising from the sale of tickets sold at Des Moines over the lines of your orators, or either of them, and all collections for freight or property hauled or carried by either of your orators to or from Des Moines, are collected by the defendant corporation and its employes, and said receipts pass into the possession and control of the defendants and the employes of the defendant, the terminal corporation who are controlled by the defendants, the Hubbells; and each month an amount sufficient to cover the amount which the defendants, the Hubbells, as controlling officers of the defendant, the terminal corporation, see fit to charge to either of your orators is retained; and the defendants have repeatedly threatened to declare the rights of your orators, or either of them, to use the said terminal property under the supplemental terminal contract of May 10th, 1889, to be forfeited if your orators, or either of them, should at any time refuse to fully pay the amount charged to it as its proportion to be paid under said last named contract. And the defendants have repeatedly threatened to deny to your orators any service by the defendant terminal corporation and to deny to your orators the right to use the said terminal property, or any part thereof, in case of the refusal by your orators, or either of them, to submit to the exaction being made, as aforesaid, each month from your orators.

## Division Three.

## 37.

And your orators further complain of the defendants Frederick M. Hubbell and Frederick C. Hubbell, and as a ground for still further and other relief represent and show to the court:

That the defendants, Frederick C. Hubbell and Frederick M. Hubbell, while being respectively the president and secretary of the Terminal Company, and after your orators became the successors in interest of the original proprietary railroad companies without authority from the board of Directors of the Terminal Company, or from your orators, built spur tracks from a connection with the tracks of the Terminal Company to industries located adjacent to said tracks, and now claim such spur tracks belong to themselves or some corporation organized and controlled by them; that since the building of such spur tracks, continuously and now, the said defend-

ants the Hubbells, switch and haul cars from the tracks of the Terminal Company over said spur tracks, using the switch engines and motive power and the employes of the defendant corporation to do such switching (at the cost and expense of your orators). And the said Hubbells, themselves, or in the name of their said corporation, collect from all railroad companies, including your orators, an extra charge of \$ . . . . . per car, and appropriate such collections or switching charges to their individual use and benefit, or to the use and benefit of their said corporation.

That such spur tracks at their initial point are each and all laid for some distance upon the ground which was acquired and is held by the Terminal Company, as is hereinbefore charged, and such spur tracks in some instances are laid in the streets or alleys of the City of Des Moines where permission was granted to the Terminal Company, defendant, by the City Council of said city. That your orators are not advised and cannot state the cost or value of the ground occupied outside of said streets and outside of the ground held by the defendant corporation as trustee for your orators as hereinbefore charged.

And your orators represent and show to the court that in good faith and in equity said spur tracks should either be conveyed to the defendant corporation for the reasonable cost of constructing the same, including right of way, or that the part of the same that has been laid upon the ground of the Terminal Company should be taken up and removed. And your orators state that they are willing that said tracks and connection may remain, provided such spur tracks and the right of way upon which they are laid be conveyed to the Terminal Company, and they are willing that the said Terminal Company reimburse the defendants Frederick M. Hubbell and Frederick C. Hubbell, or their said corporation, for the reasonable cost and expense of constructing said spur tracks, including right of way and legal interest therein, after an accounting for the amounts received for switching over the same as hereinbefore stated. And your orators here and now offer to do and perform whatever this court determines is equitable and just as a condition precedent to the conveying of said spur tracks and right of way and turning over of the same to the Terminal Company.

38.

And your orators further represent and show to the court that it would be useless and vain for them to apply to the officers or board of directors of the defendant the Terminal Company to take any action looking toward the claiming of said spur tracks for the defendant corporation, or requesting

the bringing of a suit either to destroy the connection of said spur tracks with those of the Terminal Company or to recover such spur tracks for the Terminal Company, or to require the said Hubbells or their said corporation to convey or turn over the same to the defendant corporation, because the defendants Frederick C. Hubbell and Frederick M. Hubbell, and their associates and subordinates, whom they control, fill the executive offices and constitute a majority of the Board of Directors of the defendant corporation (the Terminal Company), and aid and abet the perpetrators of the wrong for which your orators seek redress. All of which actions, statements, claims and doings by the defendants are contrary to equity and good conscience and tend to the manifest injury of your orators in the premises.

Your orators state to the court that wherever the names occur in this Bill, F. M. Hubbell means the same person as Frederick M. Hubbell; F. C. Hubbell means the same person as Frederick C. Hubbell, and F. M. Hubbell & Son means the same firm and persons as the name Frederick M. Hubbell & Son.

In consideration whereof, and forasmuch as your orators are without remedy in the premises, under the strict rules of the common law and cannot have adequate relief except in a court of equity where matters of this sort are properly cognizable and relievable; to the end, therefore, that the said Des Moines Union Railway Company, the said Frederick M. Hubbell and Frederick C. Hubbell, and their said confederates, when discovered, may be required respectively to make answer according to the best of their knowledge, information and belief, to all and singular the matters hereinbefore stated and charged, as fully and completely as if the same were here repeated, and they were thereunto particularly interrogated (but not under oath, answers under oath being hereby expressly waived) your orators pray:

1st. That it be declared that, on the terms stated in said contract of January 2nd, 1882, the complainants, their successors and assigns, are entitled, for railroad purposes, to the joint and exclusive use, in common and in perpetuity, of all the pieces and parcels of real estate, together with all buildings, tracks and improvements thereon, or appurtenant thereto, in said City of Des Moines, heretofore conveyed to the Des Moines Union Railway Company by James F. How, James F. How, Trustee, Grenville M. Dodge, the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Frederick M. Hubbell and J. S. Polk, and each of them, and all additions thereunto made by exchange or by purchase



for extensions of tracks or building grounds, where such purchases were made either by rents of the original property or by the proceeds of mortgage bonds issued as aforesaid; and that the said Frederick M. Hubbell and Frederick C. Hubbell, and each of them, their counsel, solicitors, officers, agents and attorneys be perpetually restrained by the order and injunction of this Honorable Court, from in any wise interfering with, or obstructing your orators, their officers, agents or servants, in the aforesaid use of said properties and appurtenances.

2nd. That said Des Moines Union Railway (The Terminal) Company, its officers and agents, be required to render unto your orators a full and true account of all moneys heretofore received by it or them, on account of the switching or handling of cars, or traffic, on or over said terminal properties or any part thereof, for all persons or corporations whomsoever, other than complainants; of all sums of money received from or on account of rentals of real estate, buildings and improvements, as well as the income derived from all other sources connected with the use or operation of said terminal properties, giving the dates and sources from which the same were derived; the amounts expended and the purposes and dates of all expenditures; the balance now on hand, and a full and true statement and description of all properties acquired and improvements made and paid for with or from moneys received by it or them, on account of the aforesaid operation and use of said real estate, buildings, tracks and terminals.

3rd. That it be declared that complainants, their successors and assigns, are entitled to have and enjoy the exclusive use, in common and in perpetuity, of all the real estate, tracks, buildings, improvements and terminal facilities in said City of Des Moines that have been, or may be hereafter acquired, erected or made, either in the name of the Terminal Company, or in the name of any other corporation or person, with the income or earnings derived from the rental, operation or use of said terminal properties, or any part thereof, or from sale of mortgage bonds heretofore issued or hereafter issued in the name of said Terminal Company.

4th. That the Terminal Company be required to pay over to complainants all sums of money now in its possession or under its control (in excess of the sum of \$25,000.00, to be retained as a working fund), received by it on account of the switching or hauling of cars, or traffic, on or over said terminal properties, or any part thereof, for all persons or corporations, other than complainants; and all sums of money received from, or on account of rentals of real estate, or buildings, as well as income derived from all other sources con-



nected with the use or operation of said terminal properties, or any part thereof, in the proportion that the wheelage of each complainant has borne to the total wheelage over said terminals during the months such moneys were earned or accrued.

5th. That it be adjudged and decreed that the Articles of Incorporation of said Terminal Company, as the same were adopted, signed and filed, on or about the 10th day of December, 1884, are now in full force and effect; that the same have never been amended, and that all alleged and pretended amendments thereof are void and of no effect.

6th. That all extensions of tracks that have been constructed by said Frederick M. Hubbell or Frederick C. Hubbell, or by any person or persons for them, or by any corporation organized and controlled by them, or either of them, partly on said terminal properties and partly on real estate or right of way acquired by them, or either of them, be decreed to be a part and parcel of said terminal properties, and that complainants be permitted to have the use thereof, in common and in perpetuity on such terms and under such regulations as to the Court shall seem equitable.

7th. That said defendants, Frederick M. Hubbell and Frederick C. Hubbell, and each of them, be, by the order and decree of the Court, enjoined and prohibited from hereafter asserting, claiming or publishing that said Terminal Company, is the owner in fee simple of all or any of said terminal properties, or that the only rights complainants now have therein were acquired under the said contract dated May 1st, 1889, or that after the expiration of said contracts, to-wit, after the 1st day of May, 1918, complainants will have no right to further use said terminals, excepting on such terms and for such compensation as may be agreed upon between them and said Terminal Company.

8th. That the Terminal Company be required to appoint from time to time, an Executive Committee, who shall be the nominees and representatives respectively of your Orators, their successors and assigns, which Committee shall have power to appoint a Superintendent who shall have charge of the operation, repair and management of said depot grounds and terminal facilities, including station buildings, tracks, round houses and shops, and that in default of such appointment by the Board of Directors of the Terminal Company, such Committee be, from time to time appointed by the Court.

9th. That said Frederick M. Hubbell and Frederick C. Hubbell and said firm of F. M. Hubbell & Son be perpetually restrained by the order and injunction of this Court from sell-

ing, pledging or otherwise disposing of the shares of the nominal Capital Stock of said Terminal Company that have been issued in their names, and that as holders of said stock certificates they be restrained by the order and injunction of this Court from exercising any control or management of said terminals and terminal properties excepting such as shall be in accordance with the terms and spirit of the aforesaid contract dated January 2nd, 1882, and herein referred to as Exhibit "A".

10th. That defendants Frederick M. Hubbell and Frederick C. Hubbell and said Terminal Company, and each of them, be perpetually restrained by the order and injunction of this Court from executing any lease, or entering into any contract for the use of said terminal properties by any person or corporation, after the expiration of said contract of May 10, 1889 (herein referred to as Exhibit "P"), that will in any manner interfere with or impair the rights of your orators to use said terminals in common and in perpetuity as provided in said contract of January 2nd, 1882, herein referred to as Exhibit "A".

"11th. That it be adjudged and decreed that the Des Moines Union Railway Company took and now holds the title to all the real estate that has been heretofore, or may be hereafter, acquired by or conveyed to it, for terminal purposes in the City of Des Moines, together with all the buildings, tracks and other improvements thereon, as Trustee, for the Des Moines & St. Louis Ry. Co., the Des Moines Northwestern Ry. Co., the St. Louis, Des Moines & Northern Ry. Co. and the complainants herein, as their successors and assigns, and that the complainants herein, and their assigns, now are and shall be hereafter entitled to the permanent use of the same as and for terminals for their said railroads in the City of Des Moines, on the terms and conditions stated in said contract of January 2nd, 1882, to-wit: On condition that they pay the cost of supervising, maintaining and operating said terminals and the cost of all insurance, taxes and assessments thereon according to their proportionate use thereof as evidenced by their wheelage upon and over said terminals."

12th. And that your orators may have such other and further relief in the premises as the nature of the case shall require and as to the Court shall seem meet.

May it please your Honors to grant unto your Orators, writs of subpoena, to be directed to the said defendants, the Des Moines Union Railway Company, Frederick M. Hubbell and Frederick C. Hubbell, and F. M. Hubbell & Son, commanding them; and each of them, at a certain time, and under

a certain penalty therein to be named, to appear before your Honors in this Honorable Court, and then and there severally to answer all and singular the matters aforesaid (but not under oath), and to stand to, abide, and perform such other and further orders and decrees herein as to your Honors shall seem meet.

CHICAGO, MILWAUKEE & ST. PAUL  
RAILWAY COMPANY.

By J. C. Cook, Its Solicitor.

THE WABASH RAILROAD COMPANY.

By J. L. Minnis, and Hewitt & Wright,  
Its Solicitors.

(Signed)

J. L. Minnis,

J. C. Cook,

Of Counsel.

## Exhibit "A."

Being the contract of January 2nd, 1882, referred to in the foregoing Bill.

"This Agreement made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the several individual signers thereto,

Witnesseth:

## First.

The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

## Second.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of Jas. F. How, individually, Jas. F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

## Third.

It is mutually agreed by the parties above named, that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

## Fourth.

The title to said property shall be and remain in a trustee to be named by agreement of said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

**Fifth.**

The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement.

**Sixth.**

The Des Moines and St. Louis Company shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two Companies, the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company within ten days after rendition of an account stated.

**Seventh.**

The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

**Eighth.**

It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories and other sources of trade in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge trucks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefore shall be determined by arbitration.

**Ninth.**

Taxes and assessments levied upon said property shall be charged to maintenance account.

**Tenth.**

In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the companies hereto in the same proportion

as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies parties hereto.

#### Eleventh.

All differences arising under this agreement shall be referred to arbitration, one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company, and the third by the two thus selected. The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis and the Des Moines Northwestern, then the second arbitrator shall be chosen by the Des Moines Northwestern and not by the St. Louis, Des Moines & Northern.

#### Twelfth.

It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement.

In Witness Whereof the said Railway Company, parties hereto, have caused these presents to be executed by their respective Presidents under their respective corporate seals, attested by the Secretaries of the said Companies and the several individual signers hereto have executed the same the day and year first above written.

(Corporate Seal) **THE DES MOINES AND ST. LOUIS RAILWAY COMPANY.**

By J. S. Clarkson, President.

Attest:

J. S. Polk, Secretary.

(Corporate Seal) **THE DES MOINES NORTHWESTERN RAILWAY COMPANY.**

By J. S. Polk, President.

Attest:

J. S. Runnells, Secretary.

(Corporate Seal) **THE ST. LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY.**

By J. S. Clarkson, President.

Attest:

J. S. Polk, Secretary.

(Seal)

G. M. DODGE,

(Seal)

JAMES F. HOW,

(Seal)

JAMES F. HOW, Trustee.

The Wabash, St. Louis and Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines and St. Louis, and the Des Moines Northwestern Companies.

(Corporate Seal)

**THE WABASH, ST. LOUIS AND  
PACIFIC RAILWAY COMPANY.**

By Solon Humphreys, President.

Attest:

James F. How, Secretary.

### Exhibit "B."

Being the Articles of Incorporation of the Des Moines Union Railway Company, referred to in the foregoing Bill.

Articles of Incorporation of the Des Moines Union Railway Co.

Whereas, The Des Moines & St. Louis, The Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Iowa, and have secured certain franchises, purchased certain realty and made certain improvements thereon, which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions at their joint expense in accordance with a contract made and entered into by and between said Companies and Greenville M. Dodge and James F. Howe, Trustee, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to-wit:

This Agreement, made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, and the several individual signers hereto,

Witnesseth:

#### First.

The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as herein-after provided.

#### Second.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of Jas. F. How, individually, Jas. F. How, Trustee, and Greenville M. Dodge, and certain additional property has been appro-

printed by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third.

It is mutually agreed by the parties above named that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds to the amount of their respective portions of the cost of the said purchases and improvements.

Fourth.

The title to said property shall be and remain in a trustee to be named by agreement of said Companies, but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth.

The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above referred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement.

Sixth.

The Des Moines and St. Louis Company, shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two Companies, the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

Seventh.

The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

Eighth.

It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories



and other sources of trade in and about the City of Des Moines as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge trucks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefor shall be determined by arbitration.

#### Ninth.

Taxes and assessments levied upon said property shall be charged to maintenance account.

#### Tenth.

In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to endure to the Companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Railroad Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies parties hereto.

#### Eleventh.

All differences arising under this agreement shall be referred to arbitration; one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company, and the third by the two thus selected. The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis and the Des Moines Northwestern, then the second arbitrator shall be chosen by the Des Moines Northwestern and not by the St. Louis, Des Moines & Northern.

#### Twelfth.

It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement.

In Witness Whereof the said Railway Companies, parties hereto, have caused these presents to be executed by their

respective Presidents under their respective corporate seals, attested by the Secretaries of the said Companies and the several individual signers hereto have executed the same the day and year first above written.

(Corporate Seal) **THE DES MOINES AND ST. LOUIS RAILWAY COMPANY.**

By J. S. Clarkson, President.

Attest:

J. S. Polk, Secretary.

(Corporate Seal) **THE DES MOINES NORTHWESTERN RAILWAY COMPANY.**

By J. S. Polk, President.

Attest:

J. S. Runnels, Secretary.

(Corporate Seal) **THE ST. LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY.**

By J. S. Clarkson, President.

Attest:

J. S. Polk, Secretary.

(Seal)

G. M. DODGE,

(Seal)

JAMES F. HOW,

(Seal)

JAMES F. HOW, Trustee.

The Wabash, St. Louis and Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines and St. Louis and the Des Moines Northwestern Companies.

(Corporate Seal) **THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.**

By Solon Humphreys, President.

Attest:

James F. How, Secretary.

Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said Companies, and,

Whereas, it was provided in the contract aforesaid, that a depot company might be organized to take permanent charge of the property, and it was the understanding of the parties that such Company might acquire, operate, and maintain said property in such manner as best to serve the interests of the parties thereto.

Now Therefore, for the purposes aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following Articles of Incorporation, to-wit:

## Article I.

The name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be Des Moines, Iowa.

## Article II.

The general nature of the business to be transacted shall be the construction, ownership, and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock yards, and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Iowa, as well as the transfer of cars from the line or depot of one railway to another or from the various manufactories, warehouses, storehouses, or elevators to each other or to any of the railways or depots thereof now constructed or to be hereafter constructed in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter 1 of Title IX of the Code and the amendments thereto.

All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, Jas. F. How, Jas. F. How, Trustee, and Grenville M. Dodge.

The said Company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company. Provided that the assent in writing of the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

## Article III.

The capital stock of this corporation shall be one million (\$1,000,000) dollars, which shall be divided into shares of one hundred (\$100) dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor, the property and franchises in the City of Des Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, James F. How, Trustee, James F. How, and Grenville M. Dodge.

## Article IV.

The affairs of the Company shall be managed by a Board of eight Directors, who shall be elected annually by the stockholders on the first Thursday in January of each year. The provisional Board of Directors who shall hold office until the first Thursday in January, A. D. 1886, shall consist of James F. How, A. L. Hopkins, A. A. Talmage, J. S. Rummells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis and Pacific Railway Company, two members by the Des Moines Northwestern Railway Company, and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholder shall be eligible for membership of the Board unless so nominated. The fact that a candidate has been duly nominated shall be certified to the stockholders meeting of this Company by the Secretary of one of the respective Companies aforesaid, and such certification shall be conclusive.

The provision herein with respect to nominations for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid.

No contract, lease or other agreement amounting to a permanent charge upon the property of the corporation shall be entered into by the Board unless the same shall have been first approved by the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders duly called, and shall have been approved by more than three-fourths of all the stockholders, and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided.

The Directors shall elect from their number a President, Vice-President, Secretary and Treasurer.

All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

## Article V.

The President, Vice-President, Secretary and Treasurer shall possess the powers and discharge the duties of like officers of similar corporations, subject to the limitations imposed by these Articles.

The officers hereby constituted who shall hold their respective places until the first Thursday in January, 1886, or until their successors are duly chosen, shall be as follows:

President, G. M. Dodge;

Vice-president, James F. How;

Secretary and Treasurer, F. M. Hubbell.

#### Article VI.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

#### Article VII.

The highest amount of indebtedness to which the corporation may at any time subject itself, shall be the amount authorized by law.

#### Article VIII.

Meetings of the Board of Directors may be called by the President, or in case of his absence or disability, by the Vice-President, and shall be called upon request, preferred in writing, by two members of the Board.

#### Article IX.

These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof at a meeting of stockholders therefor, of which a notice containing the proposed amendment shall be mailed to each stockholder at his address as disclosed by the transfer books of the Company. Notice of such proposed meetings shall also be given by publication for three successive weeks in some newspaper of general circulation published in the City of Des Moines, Iowa.

#### Article X.

This corporation shall commence on the fifth day of December, A. D. 1884, and continue fifty years with the right of renewal.

In Testimony Whereof, we have hereunto set our names this 10th day of December, A. D. 1884.

J. S. POLK,

F. M. HUBBELL,

J. S. RUNNELLS.

State of Iowa,

Polk County—ss.

In this 10th day of December, 1884, personally appeared before me, C. Huttenlocher, a Notary Public in and for the County of Polk, J. S. Polk, F. M. Hubbell and J. S. Runnells,

to me personally known to be the identical persons whose names are affixed to the foregoing instrument as incorporators, and acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

(Seal)

C. HUTTENLOCHER,  
Notary Public, Polk County.

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Exhibit "C."

January 1st, 1885.

The Board met this day pursuant to the call of the President, due notice thereof having been given to each member of the Board.

The members of said Board having each qualified by subscribing for one share of the capital stock of this Company.

There were present G. M. Dodge, F. M. Hubbell, J. S. Rummells, J. S. Polk and C. F. Meek.

The meeting was called to order by the President. On motion of John S. Rummells it was unanimously Resolved, that the Secretary be instructed to procure a seal for said Company, which shall consist of a circular disc, having engraved around the outer edge thereof the words, "Des Moines Union Railway Company," and in the center the word "Seal," and that such device is hereby adopted as the seal of this Company, and until the same is procured, a scroll with the word, "Seal," written in the center thereof shall be regarded and treated as the seal of this Company.

On motion of J. S. Polk, the following preamble and resolutions were submitted for the action of the Board, to-wit:

Whereas, the Des Moines and St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, the Des Moines Northwestern Railway Company, G. M. Dodge and James F. How, both in his individual right and as Trustee under the contract mentioned and set out in the Articles of Incorporation of this Company, have by their officers and by themselves, personally notified this Company that they have each for themselves approved of the organization of this Company, and have directed their officers, agents and trustees to surrender and deliver to this Company the railroad property and franchises mentioned in said contract, and requested it to take possession of and maintain and operate the same for the purposes and on the terms mentioned in said contract, and that said railway companies and individual signatories have indicated their desire and purpose to transfer

said property to this company in accordance with the terms of said contract.

Whereas, it is desirable that this Company should at once take possession of said property and maintain control and operate the same, and that it should procure all necessary conveyances and transfers of the same as soon as practicable, and make provisions for and pay for said property so proposed to be conveyed to it. Now therefore, be it

Resolved,

First,

That this Company accepts the transfer and management and operation of said property in the City of Des Moines east of Farham Street in said City, heretofore owned and controlled by the Des Moines & St. Louis Railroad Company, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as practicable, and it hereby instructs its president to make such order as may be necessary to render such control and management effective, as provided in said contract.

Second,

That the President, Vice-President, Secretary and Treasurer of this Company be, and they are hereby appointed a committee to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said properties as provided for in said contract of January 2nd, 1882.

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#### Exhibit "D."

Hereinbefore referred to in this Bill and adopted at a stockholders' meeting of the St. Louis, Des Moines & Northern Railway Company on January 1st, 1885.

On motion of F. M. Hubbell the following preamble and resolutions were submitted to the meeting for its consideration, to-wit, and were unanimously adopted:

Whereas, the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge and James F. How, and James F. How, Trustee, on the 2nd

day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate, and franchises, in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract, and,

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate, property, rights and franchises in the City of Des Moines east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract acquired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

Now Therefore,

I. Resolved, That this Company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company;

II. Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, chosen in action and rights in possession of contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract.

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#### Exhibit "E."

Board of Directors' Meeting, November 5th, 1887.

The Board met this day pursuant to the call of the President.

The following directors were present: C. F. Meek, J. S. Polk, F. M. Hubbell.



The meeting being called to order by F. M. Hubbell, Vice-president, the minutes of the last meeting were read and approved.

J. S. Polk offered the following preamble and resolution, to-wit:

Whereas, James F. How has prior to 1881, and since then, purchased certain property and made expenditures on same as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and,

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions, it is hereby

Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable after the transfer said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements with interest on same and taxes paid thereon and also three-fourths of the stock of the Des Moines Union Railway Company, said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns in lieu for the money advanced by said Company to make the purchase of the above property and improvements and the payment of taxes for this Company.

Which resolution, after being duly considered, was unanimously adopted.

C. F. Meek offered the following resolution, to-wit:

Whereas, Grenville M. Dodge has prior to 1881, and since then, purchased certain property and made expenditures on the same as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individu-

ally, should be transferred to the Des Moines Union Railway Company under certain conditions,

It is Hereby

Resolved, That Grenville M. Dodge is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above so purchased on receiving from said Company a stipulation that as soon as practicable said Union Railway Company is to deliver to him five mortgage bonds of that Company to the amount of the money advanced by him for the payment of said property and improvements with interest and taxes on the same, and also one-fourth of the capital stock of the Des Moines Union Railway Company.

Which resolution, after being duly considered, was unanimously adopted.

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Exhibit "F."

Hereinbefore referred to in this Bill and adopted at a stockholders' meeting of the Des Moines Northwestern Railway Company on January 1st, 1885.

On motion of F. M. Hubbell the following preamble and resolution were submitted to the meeting for its consideration, to-wit:

Whereas, The Des Moines, St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, on the 2nd day of January, 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines which had theretofore been held and used by certain of the individual parties thereto for certain purposes and upon certain conditions set out in said contract, and,

Whereas, On the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate, property, rights and franchises in the City of Des Moines east of Farham Street in said City of the aforesaid railway company and signatories of said contract, acquired or held thereunder and to carry out the purposes of the said contract of January 2, 1882.

Now Therefore,

Resolved, That this Company accepts and ratifies so far as its interests are affected thereby the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord, and compliance with the terms and conditions of the said contract of January 2, 1882. And undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign and transfer any interest of whatever name and character in and to the real estate, franchises, chosen in action and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired or held in pursuance of said contract.

The same having been duly considered was on motion adopted, all the stockholders present and represented voting therefor.

On motion of Mr. Rannels, the following resolution was submitted to the meeting, to-wit:

Resolved, That the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines so far as the same may now be vested in the Company to the Des Moines Union Railway Company on the 1st day of January, 1885, or as soon thereafter as practicable, leaving the question of settlement between this Company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein. And the same being duly considered, was adopted by the meeting, all the stock present and represented voting therefor.

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Exhibit "G."

Hereinafore referred to in this Bill, being proceedings at a stockholders' meeting of January 1, 1885, of the Des Moines & St. Louis Railroad Company.

## Stockholders' Meeting, Jan'y 1, 1885.

On motion of J. Polk, the following preamble and resolution were submitted to the meeting for its consideration, to-wit:

Whereas, The Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How, and James F. How, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control, and use certain real estate and franchises, in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto for certain purposes and upon certain conditions set out in said contract, and,

Whereas, On the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company, was organized as contemplated and provided in the aforesaid contract, to acquire, hold, use and enjoy the real estate, property rights and franchises in the City of Des Moines, east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract acquired or held thereunder, and to carry out the purposes of said contract of January 2nd, 1882.

Now, Therefore,

I. Resolved, That this Company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882, and undertakes to discharge all the obligations imposed upon it by said contract, in order to make effective the purposes of said Des Moines Union Railway Co.

II. Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign, and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof, purchased, acquired or held in pursuance of said contract.

The same, having been duly considered, was on motion adopted, all the stockholders present and represented voting therefor.

On motion of J. S. Kunnells, the following resolution was submitted, to-wit:

Resolved, That the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the Company, on the first day of January, or as soon thereafter as practicable, leaving the question of settlement between this Company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore adopted to be arranged as directed therein.

And the same, being duly considered, was adopted by the meeting, all the stockholders present and represented voting therefor.

F. M. Huddell,  
Secretary.

J. S. CLARKSON,  
President.

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#### Exhibit "H."

Being resolutions of Board of Directors of Des Moines & St. Louis Company offered at meeting of November 8th, 1887.

Charles M. Hays offered the following resolutions and moved its adoption, to-wit:

Whereas, James F. How, has, prior to 1881 and since purchased certain property and made expenditures on same as Trustee for the company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes paid

thereon and also three-fourths of the stock of the Des Moines Union Railway Company; said Bonds and Stock to be transferred by said H. W. to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

Said motion having been duly considered, was unanimously adopted.

On motion of John S. Runnells, the following resolution was unanimously adopted, to-wit:

Whereas, Grenville M. Dodge, has prior to 1881, and since then, purchased certain property, and made expenditures on the same as trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company, and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above on receiving from said Company a stipulation that as soon as practicable, said Union Railway Company is to deliver to him first mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on same and taxes, and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

James F. How, offered the following resolution, to-wit:

Resolved, That the President and Secretary of this Company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said Company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from city of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second (2), 1882, entered into by and between this Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and others.

Said motion having been duly considered was unanimously adopted.

There being no other business before the meeting it adjourned.

F. M. HUBBELL, Secretary.

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Exhibit "L."

Hereinbefore referred to in this Bill, being notice in writing to the Des Moines Union Railway Company given by the Des Moines & St. Louis Railroad Company:

To The Des Moines Union Railway Company:

This is to notify you that the Board of Directors of the Des Moines & St. Louis Railroad Company, at its meeting, November 8th, 1887, did pass the following resolutions, to-wit:

Whereas, James F. How, has, prior to 1881 and since purchased certain property and made expenditures on same as Trustee for this company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes thereon and also three-fourths of the stock of the Des Moines Union Railway Company; said Bonds and Stock to be transferred by said How, to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

Whereas, Grenville M. Dodge, has prior to 1881, and since then, purchased certain property, and made expenditures on the same as trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company, and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above on receiving from said Company a stipulation that as soon as practicable, said Union Railway Company is to deliver to him first mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on same and taxes, and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

Resolved, That the President and Secretary of this Company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said Company lying and being in the City of Des Moines, east of Farnham Street, whether the same was acquired by grant from city of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second (2), 1882, entered into by and between this Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and others.

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#### Exhibit "J."

Hereinbefore referred to in this Bill, being notice by St. Louis, Des Moines & Northern Railway Company to the Des Moines Union Railway Company.

To The Des Moines Union Railway Company.

You are hereby notified that the Board of Directors of the St. Louis, Des Moines & Northern Railway Company did, at its meeting, held in Des Moines, Iowa, on the 5th day of November, 1887, pass the two following resolutions, to-wit:

Whereas, James F. How, has, prior to 1881 and since then purchased certain property and made expenditures on same as Trustee for this company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others



it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes paid thereon and also three-fourths of the stock of the Des Moines Union Railway Company; said Bonds and Stock to be transferred by said How, to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

2. Whereas, Grenville M. Dodge, has prior to 1881, and since then, purchased certain property, and made expenditures on the same as trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company, and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge, is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above so purchased on receiving from said Company a stipulation that as soon as practicable, said Union Railway Company is to deliver to him first mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on same and taxes, and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

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Exhibit "K."

Hereinbefore referred to in this Bill, being notice by the Des Moines Northwestern Railway Company to the Des Moines Union Railway Company:

To The Des Moines Union Railway Company.

This is to notify you that the Board of Directors of the Des Moines Northwestern Railway Company, at its meeting held in Des Moines, Iowa, November 8th, 1887, did pass the following two resolutions, to-wit:

1. Whereas, James F. How, has, prior to 1881 and since purchased certain property and made expenditures on same as Trustee for this company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, Under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes paid thereon and also three-fourths of the stock of the Des Moines Union Railway Company; said Bonds and Stock to be transferred by said How, to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

2. Whereas, Grenville M. Dodge, has prior to 1881, and since then, purchased certain property, and made expenditures on the same as trustee for this Company, the money expended for said property being furnished by the said Dodge, and,

Whereas, Under an agreement between this Company, and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge, individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested by this Company to transfer to the Des Moines Union Railway Company, the property referred to above, so purchased, on receiving from said Company a stipulation that as soon as practicable, said Union Railway Company is to deliver to him first

mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on same and taxes, and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

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Exhibit "L."

Being deed from James F. How, Trustee, to Des Moines Union Railway Co.

James F. How, Trustee,

to

Des Moines Union Ry. Co.—ss.

Deed.

Whereas, The property hereinafter described was from time to time purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company; and Whereas for its convenience the legal title to said property was conveyed to me in trust; and Whereas said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee; and which contract was consented to by the Wabash, St. Louis and Pacific Railway Company; and Whereas I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust, for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas the Board of Directors of said Des Moines & St. Louis Railway Company and the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas, James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement with this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How

is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now, Therefore, Know all Men by These Presents:

That I, James F. How, Trustee, as aforesaid, of the City of St. Louis, State of Missouri, in consideration of the premises, and of the sum of one dollar, to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, the several lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows:

Official Plat Lot three (3) in the northwest quarter of Section (9) Township seventy-eight (78) Range twenty-four (24) West of the 5th P. M. Iowa; Lot six, and the south half of Lot five in Block twenty-two (22) Lots five (5) and seven (7) and the South sixty-six feet (66) of Lots one (1) and two (2) and the south half of Lot three (3) all in Block thirty-one (31); Lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) in Block thirty-two (32) all in Keene & Poindesters Addition to Fort Des Moines; Lot three, Block fourteen, and Lot five and six in Block fourteen Lots five and six and the north two-thirds of Lots seven, in Block 18, Lot Three in Block twenty-two, Lot three and the west half of Lot five (5) and six (6) in Block nine, all in Hoxies Addition to the Town of Fort Des Moines; Lot nine and the north two-thirds of Lot four in Block thirty-five (35); Lot four (4) and the north two-thirds of Lot nine (9) in Block thirty (30); Lots four (4) and the south two-thirds of Lot nine (9) in Block twenty-five (25); Lot nine and the south one-third of Lot ten (10) less a strip four feet in width from the north side of said one-third and the south one-third of Lot three (3) in Block twenty (20); Lots one (1) two (2) seven (7) and eight (8) in Block fifteen (15); Lots one (1) two (2) and leasehold interest seven (7) and eight (8) in Block nine (9); Lot two (2) in Block four (4) all in the original town of Fort Des Moines; Lots five (5) and six (6) in Block D, Lot twelve (12) in Block I, Lots three (3) and twelve (12) in Block three (3) all in Scott & Dean's Addition to Fort Des Moines. The right of way in the rear of Lot seven (7) in Block fourteen (14) beginning at the west line of Seventh Street and extending westward ninety-nine feet; Lots seven (7) and fifteen (15) in Block sixteen (16); Lots twelve (12) and thirteen (13) in Block eleven (11); Lots ten (10) and eleven (11) in Block twelve (12); Lots one (1) and nine (9) and official Plat Lot eleven (11) in Block twenty-one (21); all interest in alley adjoining Lots one (1) and two (2) in

Block thirteen (13); Lots eight (8) nine (9) fifteen (15) and sixteen (16) in Block thirteen (13); Lot fifteen (15) in Block fifteen (15); the undivided one-fourth of Lot two (2) and official plat Lot thirteen (13) in Block twenty-two (22); Lots three (3) four (4) five (5) six (6) seven (7) and eight (8) in Block twenty-three (23) all in the Town of Des Moines; Lot twenty-three (23) north two and seventy-five one hundredths acres of Block forty (40) west one-third (now official plat Lot one) of Block forty-five (45), all of Lot thirty-six (36) all in Brooks and Company's Addition to the City of Des Moines.

To have and to hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me.

In testimony whereof, I have hereunto set my hand and seal this 19th day of November, A. D. one thousand eight hundred and eighty-seven.

JAMES F. HOW.

City of St. Louis,  
State of Missouri—ss:

On this sixteenth day of April, A. D. 1888, before me, a notary public within and for the City of St. Louis and State of Missouri, personally appeared James F. How, to me personally known to be the identical person whose name is affixed to the within and foregoing instrument of writing as grantor therein, and who acknowledged that he executed the same as his voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said City of St. Louis the day and year first above written.

My term expires June 29th, 1889.

(Notarial Seal)

MILLARD F. WATT,

Notary Public, City of St. Louis, State of Missouri.

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Exhibit "M."

Being deed of James F. How and wife to Des Moines Union Railway Company.

James F. How and Wife  
to  
Des Moines Union Ry. Co.

## Deed.

Whereas, The property hereinafter described was from time to time purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company, a corporation; and Whereas, for its convenience the legal title to said property was conveyed to me in trust; and Whereas, said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company; the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, and which said contract was consented to by said Wabash St. Louis & Pacific Railway Company; and Whereas, I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust, for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas, the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to wit:

"Whereas, James F. How has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement between this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now, Therefore, Know all Men by These Presents:

That I, James F. How, of the City of St. Louis, State of Missouri, in consideration of the premises, and of the sum of one dollar, to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, the several lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows:

Lot one (1) of the Official Plat of Lot twenty-four (24) and Lot two (2) of the Official Plat of Lot twenty-five (25), and Lot one (1) of the Official Plat of Lot twenty-six (26), all in Brook and Company's Addition to the City of Des Moines; and the East one-half (1/2) of Lot two (2) in Block fifteen (15) in the original town of Fort Des Moines. Also the right of way in alley adjoining Lots one (1) and two (2) in Block thirteen (13) in the Town of Des Moines, and Lot nine (9) in Block twelve (12) in the Town of Des Moines, now a part of the City of Des Moines. And Eliza A. How, wife of the said James F. How, hereby relinquishes her right of dower in and to the above described premises. To have and to hold all and singular the several pieces and parcels of real estate aforesaid with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises and that I only undertake to warrant and defend against those claiming through and under me.

In testimony whereof I have hereunto set my hand and seal this tenth day of December, A. D. one thousand eight hundred and eighty-seven.

(Seal)

JAMES F. HOW,

(Seal)

ELIZA A. HOW.

(The above deed was duly verified on the 17th day of April, 1888).

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### Exhibit "X."

Being deed from James F. How, Trustee, to Des Moines Union Railway Company.

James F. How, Trustee

to

Des Moines Union Ry. Co.—ss.

### Warranty Deed.

Whereas, The property hereinafter described was purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company, a corporation; and Whereas, for its convenience the legal title to said property was conveyed to me in trust; and Whereas, said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company; the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, and



which said contract was consented to by said Wabash, St. Louis & Pacific Railway Company; and Whereas, I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust, for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas, the Board of Directors of said Des Moines & St. Louis Railway Company and the Board of Directors of the said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas, James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement with this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now, Therefore, Know all Men by These Presents:

That I, James F. How, Trustee, as aforesaid, of the City of St. Louis, State of Missouri, in consideration of the premises, and of the sum of one dollar to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, a strip of land fifty (50) feet in width lying north of and adjoining the north line of the right of way of the Chicago, Rock Island & Pacific Railway and being part of Lot two (2) of the Official Plat of the northwest quarter of the northeast quarter of Section eight (8) Township seventy-eight (78) north Range twenty-four (24) west of the 5th P. M. lying and being in the City of Des Moines, County of Polk, State of Iowa To have and to hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only



undertake to warrant and defend against those claiming through and under me.

In testimony whereof I have hereunto set my hand and seal  
this 28th day of April, A. D. one thousand eight hundred  
and eighty-eight.

JAMES F. HOW.

(The above deed was duly acknowledged on the 28th day  
of April, A. D. 1888).

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Exhibit "D."

Being Quit Claim Deed from G. M. Dodge and wife of Des  
Moines Union Railway Company.

G. M. Dodge & Wife,

to

Des Moines Union Ry. Co.

Quit Claim Deed.

This Indenture made the seventh day of November in the  
year one thousand eight hundred and eighty seven, between  
G. M. Dodge and Annie Dodge, his wife, of Pottawattamie  
County, State of Iowa, parties of the first part, and the Des  
Moines Union Railway Company, parties of the second part.  
Witnesseth: That the said Party of the first part for and  
in consideration of the sum of One Dollar and other valuable  
considerations, lawful money of the United States of America,  
to them in hand paid by the said parties of the second part  
at or before the enscaling and delivery of these presents, the  
receipt whereof is hereby acknowledged, have remised, released,  
and Quit claimed, and by these presents doth remise, release  
and Quit claim unto the said parties of the second part and to  
their heirs and assigns forever. All of the following described  
premises situated in the county of Polk and State of Iowa,  
to wit:

Lots numbered one and two in Block numbered twenty-two  
in H. M. Hoxies Addition to the Town of Fort Des Moines  
now included in the corporate limits of the City of Des Moines.

Together with all and singular the tenements, hereditaments  
and appurtenances therunto belonging, or in any wise apper-  
taining, and the reversion and reversions, remainder and re-  
mainders, rents and issues and profits thereof; And also,  
all the estate, right, title, interest in the above described prop-  
erty, possession, claim and demand whatsoever, as well in law  
as in equity, of the said party of the first part of, in or  
to the above described premises; and every part and parcel  
thereof, with the appurtenances. To have and to hold all and

singular the above mentioned and described premises, together with the appurtenances unto the said parties of the second part and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

G. M. DODGE,  
ANNIE DODGE.

Sealed and Delivered  
in the presence of  
J. T. Granger,  
L. F. Bartels.

(The above deed was duly acknowledged by G. M. Dodge on the 9th day of Nov., 1887, and by Annie Dodge on the 15th day of Nov., 1887).

#### Exhibit "P."

This Agreement, made and entered into this 10th day of May, A. D. 1889, by and between the Des Moines Union Railway Company of Des Moines, Iowa, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part,

Witnesseeth that:

Whereas, the said party of the first part is the owner of valuable terminal facilities in the city of Des Moines, Iowa, as hereinafter described, and:

Whereas, the respective parties of the second part have railroads in the state of Iowa which terminate at, or run into and through said city of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party, and,

Whereas, said party of the first part has become incorporated and organized under the laws of the state of Iowa for the purpose of owning and operating a line of railway in the said city of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham street, in the western part thereof; and

Whereas, said party of the first part in pursuance of said charter has acquired and now owns a railway in said city, as

above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas said second parties are each desirous, of having the right to use said terminals in connection with their respective railroads; and

Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties and liabilities of each in regard to the whole subject matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance and repairs, shall be stated and defined.

Now Therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself) as follows:

Section One. The party of the first part agrees to proceed with reasonable dispatch and whenever its board of directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said city of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots, round houses, shops, water tanks, and yard appurtenances, as the board of directors of said first party may consider reasonable, and for these purposes said first party shall acquire by lease, purchase or otherwise such additional real estate as may be necessary.

Section Two. The amount of such additional grounds and the form, character, and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement, and repairs thereof, shall in all matters not otherwise specifically provided for herein be determined by the board of directors of said first party.

Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay to said party of the first part a sum of money to be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction herein-after provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round houses, transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligations to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month; and it is expressly understood and agreed that in computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard gauge cars; and that the term "wheelage," as used in this contract, means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

Section Five. If the amount, or any part of the amount, due from any other railroad company or companies for the use of said property, or any part thereof, shall not be paid when due, then the sum so due and unpaid shall also, on demand of said first party, be paid to it by said second parties on a wheelage basis as hereinbefore defined.

Section Six. The party of the first part, in consideration of the payments to be made to it by said parties of the second part, hereby grants to said second parties the use of its terminal properties aforesaid, and said first party agrees to keep and maintain its said terminal properties in good condition and repair, and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such

servants and employes as shall be reasonably necessary for the conduct of its business and the moving and handling of the cars, passenger and freight, of said second parties, and the housing and care of their engines. And said first party further agrees to switch all cars, handle all freight, house and care for all engines of said second parties which may be delivered to it or which may come upon its said premises, in so far as either of said second parties may request it so to do.

Section Seven. The party of the first part shall on or before the tenth day of each month, or as soon thereafter as practicable, make up and present to each of the parties of the second part, an account showing the amount due thereunder for the preceding month, and payment thereof shall be made within five days thereafter.

Section Eight. So far as relates to the rental necessary to raise a fund for the payment of interest upon the mortgage bonds, this contract shall be retrospective and shall govern from and after the first day of May, 1888.

Section Nine. The costs and expenses of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping, washing and firing up, shall be borne by each of said companies in such proportion as the number of road engines of each company in and out of said engine house shall bear to the whole number of road engines in and out of said engine house during the period for which said costs and expenses are made up. All repairs to engines shall be charged for and paid by each of said companies for whom the work is done on the basis of actual cost of labor and material, and all services rendered supplies and labor furnished to any of the railroad companies parties hereto for their own benefit, and which are not properly a portion of the joint expenses, shall be charged directly to said company, on such equitable terms as may be agreed upon between the superintendent of the party of the first part and the superintendent of the party to whom the service is rendered.

Section Ten. It is further agreed between the party of the first part and each of the second parties hereto, that if any one of the parties of the second part shall, for any reason, fail or refuse for a period of thirty days after the same has become due, and has been demanded, to pay the several sums under this contract as aforesaid, then the party of the first part may take from any moneys in its hands belonging to the said defaulting party, or in the hands of its agents, the amount of said sums and apply a sufficient amount thereof to meet said demands. Should the sum in the hands of the party

of the first part, or its agents, be insufficient to meet the amount due under this agreement and the same shall still remain unpaid, said first party shall have the right to exclude said delinquent party from said premises, and the party or parties so failing to pay shall forfeit all rights under this agreement, and the first party may thereupon, with the consent of the remaining parties of the second part, transfer and assign the rights of the party so failing to any other party or parties, for such sum as the board of directors of the first party may determine, and the same may be thereafter held and enjoyed by such assignee or assignees. But it is understood and agreed that nothing herein shall prevent the party of the first part from enforcing its claims against any delinquent lessee or lessees, parties of the second part, by any proper action either at law or in equity, to recover the amount which may at any time due and unpaid, in case said party of the first part shall so elect.

Section Eleven. The directors of the party of the first part hereto shall appoint an executive committee, of which each party of the second part shall have one member as its representative.

Section Twelve. The management of the depot grounds and terminal facilities, including station buildings, tracks, round houses, shops, etc., shall be in charge of a superintendent who shall be appointed by the executive committee, subject to the approval of the board of directors. Said superintendent shall, in the performance of his duties, be governed by such regulations as may from time to time be established by said executive committee, or by the board of directors.

Section Thirteen. The salary of said superintendent shall be fixed by the executive committee, subject to the approval of the board, and the compensation of other agents and employes shall not be higher than is paid by railroad companies in the vicinity for similar services.

Section Fourteen. Said terminal properties shall be used by said railroad companies, parties of the second part, for all their passenger trains destined for or departing from said city of Des Moines, Iowa, and said second parties shall run all their trains to and from said depots and terminal properties, unless otherwise expressly permitted by said executive committee.

Section Fifteen. Said executive committee, subject to the board, shall make, and publish and enforce such rules and regulations for the use, management and operation of said terminal stations, depots, depot grounds, yards and tracks, by

all the parties hereto, as it may from time to time consider necessary.

**Section Sixteen.** The said party of the first part shall at all times protect its depot buildings and improvements and furniture by adequate insurance against loss by fire, and the cost of such insurance shall be paid as herein provided for.

**Section Seventeen.** The party of the first part shall keep accurate books of account showing in detail all the expenditures made by it on account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance, and repairs, and other disbursements upon and about the premises, embraced in this agreement, and said books shall show the amount of work done for, and fuel or other material furnished to each party to this agreement, and the amount of fuel or other material received from each party hereto; and said books shall give such other details as will at all times enable the parties hereto to make accurate settlements of their accounts as provided in this agreement, and said books may at all reasonable and proper hours be examined and inspected by the superintendent, auditor or treasurer of said second parties, or by an authorized accountant.

**Section Eighteen.** The said party of the first part shall also keep an accurate record of all the engines and cars of each party hereto arriving at and departing from said terminal station, or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched on to or from said terminals for the benefit of the several parties hereto, or others; and of all the engines which have been housed at said engine houses in each month; and as hereinbefore provided, said first party shall furnish to the other parties hereto, a full, true and detailed statement of all the expenditures made, of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

**Section Nineteen.** All damages which may be received by any engine or engines, car or cars of any party hereto, while being switched by said first party at or upon any part of the premises embraced in this agreement, shall be repaired by the party to whom such rolling stock belongs, and the cost of such repairs shall be borne and paid by each party hereto on a wheelage basis, as herein defined.

**Section Twenty.** All damages to property other than as above described, caused by any engine or engines, car or cars, of either party hereto, or by any imperfection in the track or



tracks laid on said premises, and all injuries which may at any time be received by any person or persons in, around about or upon said terminal station, depot grounds, yards, etc., shall (if settled at all) be adjusted and settled by said first party, and the sums thus paid in settlement or settlements shall be borne and paid by each of the parties hereto upon said wheelage basis, as herein defined: Provided, however, that each party hereto shall, at its own sole cost and expense, bear, settle and pay all damages to property belonging to itself or to third parties, and all injuries to persons, when said damages or injuries are done to or by its own trains, while said trains are being moved by its own engines and operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the servants of said first party, or by some imperfection in its track or tracks, and in case such damages or injuries are occasioned by the act, negligence or fault of the servants of said first party, or by an imperfection in its said tracks, then settlements and payments shall be made by said first party as in this section first provided.

Section Twenty-one. All persons employed and paid either permanently or temporarily by said first party in the maintenance and operation of said terminal station, depot grounds and yards, shall be deemed and taken to be the employes and servants of said first party.

Section Twenty-two. It is further agreed that the several covenants, conditions and stipulations herein contained shall be mutually binding upon the respective parties hereto, their successor, successors and assigns for the term of thirty years from May 1, 1888, unless this contract shall be sooner determined by consent of the parties hereto, or by reason of the provisions hereof.

Section Twenty-three. It is further understood and agreed that all of the aforesaid covenants and agreements on the part of said parties of the second part to be performed, are several and not joint.

Section Twenty-four. It is understood and agreed that the Des Moines & St. Louis Railroad Company, as the owner of one-half of the capital stock of the Des Moines Union Railway Company, may sell and transfer one-half of said stock, or one-quarter of the whole to such railway company as may be acceptable to a majority of the parties of the second part; in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of



the second part. Only as aforesaid, shall other railroad companies be admitted to the use of the property of said first party, without the consent of all the parties of the second part, and the compensation to be paid by any other railroad company, or person not a party hereto (or provided for as aforesaid) for the use of said depot or terminal facilities, or any part thereof, shall be determined by the board of directors of said first party.

Section Twenty-five. It is further agreed by and between said first party and the several second parties hereto, that any of said second parties may sell, assign and transfer to any other one railroad company all its rights under this agreement, or said second parties, or any of them, may mortgage to any one party all their respective interests and rights under this contract; but none of said second parties shall sub-divided, sublet, mortgage or assign to any other company or person a portion of its said right and privileges herein, and any assignment, mortgage or lease made by any one of said second parties, which may be held sufficient to admit its assignee, mortgagee or lessee, or their assigns, to the possession of any of said property, shall be held sufficient to exclude, and shall exclude, the party making such lease, mortgage or assignment from all its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as to prevent any of said second parties from contracting to do the business, or handle with its own engines the traffic or cars of any other railroad company to and from said city on such terms as said first party may approve, provided the line of such other railroad company connects with the line of such second party not less than twenty miles from said city of Des Moines.

Section Twenty-six. Whereas, the several parties hereto of the second part are entitled to the shares of the stock of said first party in the following amounts or proportions, to-wit: The Des Moines & St. Louis Railroad Company to one-half said shares; the Des Moines & Northwestern Railway Company to one-fourth said shares; and the St. Louis, Des Moines & Northern Railway Company to one-fourth said shares, and,

Whereas, no certificates for said shares have as yet been issued to said parties;

Now, therefore, it is hereby further agreed between the parties hereto, that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of one hundred dollars each, the same shall be issued and held as follows, to-wit: One certificate of ten thousand shares shall

be issued and delivered to the Des Moines & St. Louis Railroad Company, one certificate for five thousand shares shall be issued and delivered to the St. Louis, Des Moines & Northern Railway Company, and one certificate for five thousand shall be issued and delivered to the Des Moines & Northwestern Railway Company, and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement, except that any shares of stock issued on request of either of said companies to any person, to qualify him as a member of the board of directors shall be re-transferable to the company on whose request it shall have been issued without the consent of the other companies; but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued, unless consented to by the other parties of the second part.

Section Twenty-seven. Whereas, the parties of the second part have herein and hereby obligated themselves to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used, or to be hereafter issued and used by said first party in purchasing, improving and equipping the terminal properties herein described;

Now therefore, in consideration of the premises, the said first party hereby contracts and agrees to and with each of the second parties hereto, that it will not at any time hereafter issue or dispose of any of said bonds except for the purposes of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in said city of Des Moines.

Section Twenty-eight. In case any difference shall hereafter arise between the first and second parties hereto, concerning the management of said terminal station, depot, grounds, yards, and tracks, with respect to any matter not herein provided for, or concerning any other matter or thing connected therewith, but not herein expressly provided for, such differences shall be referred to three competent men experienced in railroad management, who shall, as soon as practicable after they are chosen, proceed to examine and determine what would be just and equitable for each of said parties to do in and about the matter in dispute. Each party shall choose one of said arbitrators and the two thus chosen shall select the third arbitrator and the decision in writing of a majority of said arbitrators with respect to the matter submitted, shall be furnished to and be thereafter binding upon

each of the said parties; Provided, however, that such differences shall have no effect on the course of business at said terminal station, depot, grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, and such settlements and payments as are herein provided for shall be made as before, until the matter in dispute shall be adjusted by the said arbitrators, and thereupon such payments or restitutions shall be made as may be required by the decision of said arbitrators.

In Witness Whereof, the respective parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their respective presidents, and attested by their secretaries respectively, the day and year first above written,

(Seal) **THE DES MOINES UNION RAILWAY COMPANY,**

By G. M. Dodge, President.

Attest: F. M. Hubbell, Secretary.

(Seal) **THE DES MOINES & ST. LOUIS RAILROAD COMPANY,**

By James F. How, President.

Attest: F. M. Hubbell, Secretary.

(Seal) **THE ST. LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,**

By G. M. Dodge, President.

Attest: J. T. Granger, Secretary.

(Seal) **THE DES MOINES & NORTHWESTERN RAILWAY COMPANY,**

By F. M. Hubbell, President.

Attest: A. N. Denman, Secretary.

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### Exhibit "Q."

This Indenture, made this Fifteenth day of March, A. D. 1894, by and between Frederick M. Hubbell, individually, and Frederick M. Hubbell & Son, co-partners, all of Des Moines, Iowa, parties of the first part, hereinafter called "The Associates;" the Chicago, Milwaukee & St. Paul Railway Company, a corporation of the State of Wisconsin, authorized to own and operate Railroads in the State of Iowa, party of the second part, hereinafter called "The St. Paul Company;" and Roswell Miller, of the City of Chicago, County of Cook and State of Illinois, party of the third part, hereinafter called "The Trustee,"—Witnesseth:

1. That the Des Moines, Northern & Western Railway Company, hereinafter called "the Des Moines Company," owns and operates certain lines of Railroad, aggregating about 150 miles in length, extending, respectively, from Des Moines to Boone, and from Olive to Fonda, all in the State of Iowa; and the St. Paul Company owns and operates an extensive system of Railroads, aggregating about 6,150 miles in length, in Illinois, Iowa and other States, and its Line from Chicago to Council Bluffs intersects and connects with the Lines of the Des Moines Company at Madrid and at Herndon, respectively, and by means of such connections it is able to give to the Des Moines Company a large amount of traffic not otherwise obtainable, and thereby greatly increases the prosperity of said Company.

2. That the Associates own Thirty Thousand Shares, out of a total issue of Forty-two Thousand Shares of One Hundred Dollars each, of the Capital Stock of the Des Moines Company, and Two Million and Five Thousand Dollars out of a total issue of Two Million, Seven Hundred and Seventy Thousand Dollars of its First Mortgage Bonds which Bonds bear interest at the rate of Four per cent per annum up to January 1st, 1897 and thereafter at the rate of Five per cent per annum—and desire that the St. Paul Company shall acquire an interest in said Capital Stock, and enter into close traffic relations with said Des Moines Company, and that the St. Paul Company is willing to acquire such interest and to enter into such traffic relations, on the terms hereinafter set forth; and

3. That in consideration of the premises, and of their mutual and dependent covenants hereinafter contained, the parties hereto have agreed and do hereby agree each with the other, and each with all the others, as follows, to-wit:

First. In consideration of the execution by the St. Paul Company of a certain Traffic Agreement with the Des Moines Company (a copy of which agreement is hereto attached and hereby referred to), the Associates hereby jointly and severally agree that until any termination of the Traffic Agreement aforesaid, or until the expiration of the option given in Section Three hereof, the Capital Stock of the Des Moines Company shall not, without the written consent of the St. Paul Company, be increased beyond Forty-two Thousand Shares of One Hundred Dollars each, except by the issue of Stock at par in payment for the actual cost of property hereafter to be acquired, and that all said Shares, issued or to be issued, shall have equal rights and preferences.

Second. As a further and additional consideration for the execution by the St. Paul Company of the Traffic Agreement aforesaid, and in consideration of the sum of One Dollar to

them in hand paid by said Company, the receipt whereof is hereby acknowledged, the Associates do hereby sell, assign, transfer and set over to the St. Paul Company Sixteen Thousand, Eighth Hundred Shares of the Capital Stock of the Des Moines Company, and agree to deposit said Shares at the time, in the manner and for the purposes set forth in Section 7 hereof.

Third. As a further and additional consideration for the execution by the St. Paul Company of the aforesaid Traffic Agreement, and in consideration of the sum of One Dollar to them in hand paid by said Company, the receipt whereof is hereby acknowledged, the said Associates do hereby give and grant unto the St. Paul Company the right and privilege of purchasing from them—and they hereby agree to sell to it, if it elects so to purchase—Six Thousand Four Hundred and Sixty-eight Shares, additional to the Sixteen Thousand, Eight Hundred Shares above mentioned, of the Capital Stock of the Des Moines Company at and for the sum of Forty-six Thousand, Two Hundred Dollars; provided that such right and privilege be exercised by the St. Paul Company on any day after the 1st day of January, 1897, and not later than 12 o'clock noon of the 1st Monday in April in the year 1899, and in the manner hereinafter set forth.

Fourth. And for the consideration first aforesaid, the Associates further agree that the principal of the present Mortgage indebtedness of the Des Moines Company shall not, without the written consent of the St. Paul Company first obtained, be increased, by the issue of additional Bonds, beyond the said Two Million, Seven Hundred and Seventy Thousand Dollars in Bonds now outstanding, except by the issue of bonds at par in payment for the actual cost of property hereafter acquired, and that none of the bonds so to be issued shall bear interest at a higher rate than four per cent per annum; and that no other or further Mortgage shall, without like consent as aforesaid, be placed on the railway or property of the Des Moines Company. And the Associates also agree to use all lawful and proper means to procure a reduction in the rate of interest on said outstanding bonds, so that said bonds shall, from and after the first day of April, 1897, bear interest at not exceeding four per cent per annum. Provided however, that this Section shall not be construed so as to prevent the Des Moines Company from making a new Mortgage and issuing new bonds thereunder for the purpose of renewing or extending its present Mortgage indebtedness; but provided also, that the new bonds so to be issued shall bear interest at not exceeding Four per cent per annum, and shall not exceed in amount the aggregate of the principal sum of the present outstanding bonds of said Company and the interest thereon

which shall have accrued and be unpaid at the time of the issuing of new bonds therefor; and provided further, that said new bonds, or their proceeds, shall be used only for the purposes aforesaid, and that the present outstanding bonds and coupons, exchanged therefor or redeemed thereby, shall be cancelled when and as so exchanged or redeemed.

Fifth. The Associates further agree that if they shall be unable to procure the reduction in interest on said Bonds, as provided in the next preceding Section, then and in such case they will cause proceedings to be instituted to foreclose the Mortgage securing said Bonds, and will use all lawful and proper means to accomplish such foreclosure and sale of the property covered by said Mortgage, and a new Company shall be organized to take over said property, which new Company shall possess and own all the property, rights, privileges and franchises, of every name and description, now belonging to or enjoyed by the Des Moines Company, and shall have a Capital Stock which shall not exceed the Mortgage indebtedness of said Company more than fifty per cent, divided into shares of One Hundred Dollars each, and a Mortgage debt, bearing not more than Four per cent interest per annum, and not exceeding in amount the principal sum of the present outstanding Bonds of the Des Moines Company, with all just and lawful interest thereon to the date of the organization of said new Company, and all costs and expenses of foreclosure, including costs and expenses incurred by a Receiver or Receivers, if such shall be appointed; and that Fifty-five and Four-tenths (55.4) per cent of said new Stock shall be deposited with the Trustee, as hereinafter provided.

Sixth. And for the consideration first aforesaid, the Associates further agree that the Board of Directors of the Des Moines Company shall consist of not more than seven members, and at the next Annual meeting of the Stockholders for the election of Directors the St. Paul Company shall be represented in said Board by three persons nominated by it; and in case a new Company is organized to take the place of the Des Moines Company, as contemplated in the next preceding Section hereof, then its Board of Directors shall consist of seven members, and the St. Paul Company shall have the right to nominate three of said members.

Seventh. The Associates further agree that, simultaneously with the execution hereof, they will deposit with the Trustee Twenty-three Thousand, Two Hundred and Sixty-eight Shares of the present outstanding Capital Stock of the Des Moines Company; and if a new Company shall be formed to take the place of said Des Moines Company, then and in such case they will deposit with the said Trustee Fifty-five

and Four-tenths per cent of the Shares of the Capital Stock of such new Company, in exchange and substitution for the 23,268 Shares first mentioned; and all of said shares, whether of the Des Moines Company or of the new Company, shall be held by the said Trustee for the following purposes and on the following conditions and trusts, to-wit:

1. That the said Trustee may and shall, at each Annual or other meeting of the Stockholders of the Des Moines Company (or of such new Company, if one be formed) held for the election of Directors, vote for the four persons by the said Associates nominated to him in writing as Directors, and for the three persons who may be by the St. Paul Company nominated to him in like manner and for the like purpose. But in case the Associates shall at any time fail to nominate, then the Trustee may and shall, for and on their behalf, choose as such Directors four suitable persons, not Officers of or connected with the St. Paul Company; and in case the St. Paul Company shall fail so to nominate, then the Trustee shall, for and on its behalf, choose as such Directors the persons who may at that time be the President, Third Vice President and General Manager, respectively, of the St. Paul Company.

2. That said Trustee may and shall, at any Annual or Special meeting of the Stockholders of the Des Moines Company (or of such new Company, if one be formed) vote for such measures as may lawfully be required to be adopted thereat, in order to carry out the provisions of this agreement and of the Traffic Agreement hereto attached; and for such other purposes, not inconsistent with the terms of said agreements, or either of them, as said Associates may from time to time request.

3. That the said Trustee may and shall, on the 15th day of March, 1895, and thereafter on the like day of each year during the continuance of the Traffic Agreement aforesaid (but not exceeding in all five years) transfer and deliver to the St. Paul Company Three Thousand, Three Hundred and Sixty Shares of the Capital Stock of the Des Moines Company; or in lieu thereof, eight per cent of the Shares of the Capital Stock of such new Company, if one be formed—being one-fifth part for each year of the 16,800 Shares of the Stock of the Des Moines Company (or their equivalent in the Stock of the new Company) which the Associates have in and by the Second Section hereof agreed to convey to the St. Paul Company.

4. That the said Trustee may and shall, at any time after the 1st day of January, 1897, and prior to 12 o'clock noon of the first Monday of April, in the year 1899, on the payment to or deposit with him by the St. Paul Company of the sum of



Forty six Thousand, Two Hundred Dollars, for the use and benefit of the Associates, assign, transfer and deliver to said Company all the Shares of the Capital Stock of the Des Moines Company (or of the new Company, if one be formed) then remaining in his hands, anything in the next preceding paragraph hereof to the contrary notwithstanding.

5. That the said Trustee may and shall, at any determination of this agreement, and upon notice thereof signed by the parties hereto, deliver up or pay over any shares of Stock or any money, as the case may be, then in its hands, to the owners thereof, upon receiving proper receipts for the same; and thereupon this Trust shall be discharged.

Eighth. The Associates further agree that they will pay to the Trustee such just and proper compensation for his services, in any matter growing out of this undertaking, as may be agreed upon between themselves and the said Trustee, and that they will hold and save the St. Paul Company free and clear from all claims of the said Trustee for such compensation; and they also agree that if and whenever the said sum of \$46,200 shall be paid to or deposited with the said Trustee by the St. Paul Company, and written notice thereof shall have been served upon Frederick M. Huddell—one of the said Associates—by depositing the same in the United States Postoffice, addressed to him at Des Moines, Iowa, then and thereafter the said Company shall be in no wise liable for the misapplication or non-application of the money so by it paid or deposited, and that all the rights and interests of said Associates, to and in any and all of the Capital Stock deposited with the Trustee as aforesaid, shall wholly cease and determine when such payment or deposit is made; and thereupon they will, when thereto requested by the St. Paul Company, cause a meeting of the Board of Directors of the Des Moines Company, or of the new Company, as the case may be, to convene, and their representatives in said Board to resign, one by one, and to elect in their places such persons as may be thereto nominated by the St. Paul Company.

Ninth. In consideration of the agreement of the Associates, to pay him a just and proper compensation for his services therein, the Trustee hereby accepts the trust aforesaid, and agrees to faithfully perform all the acts and discharge all the duties mentioned and set out in the Seventh Section of this Indenture, when and as the same may be required of it.

Tenth. In consideration of the performance by the parties thereto of their respective covenants hereinabove set forth, faithfully and within the time and times limited therefor,



the St. Paul Company hereby agrees that it will enter into and execute the aforesaid Traffic Agreement with the Des Moines Company, and that in case a new Company is formed to take the place of the Des Moines Company, within the time and upon the terms for that purpose hereinabove mentioned and set forth, it will make a Traffic Agreement with said new Company for the then unexpired term of the Traffic Contract aforesaid, and upon the terms and conditions therein contained; but the St. Paul Company expressly reserves to itself the right to terminate this Indenture and the aforesaid Traffic Agreement with the Des Moines Company, without notice, on the second day of April, 1897, if at that time the Associates have failed to perform their covenants hereinbefore contained, or if the Mortgage Bonds of the Des Moines Company then bear interest at a higher rate than Four per cent per annum, or if the property of said Company has not then been acquired by a new Company formed as hereinabove contemplated.

Eleventh. The St. Paul Company further agrees that if and whenever it shall in any manner acquire the absolute ownership of Fifty-one per cent in amount of the Capital Stock of the Des Moines Company, or of the new Company, if one be formed as aforesaid, then the Traffic Contract hereinabove mentioned and referred to shall remain in full force until the 15th day of March, A. D. 1901, anything herein contained to the contrary notwithstanding.

Twelfth. It is mutually understood and agreed by and between the Associates and the St. Paul Company, that if the Associates shall faithfully endeavor to perform the obligations by them assumed, in the Fifth Article hereof, but nevertheless fail to perform the same, they shall not be liable in damages to the St. Paul Company by reason of such failure; Provided however, that nothing in this 12th Section contained shall be construed so as to limit or abridge in any manner the rights and privileges reserved to itself by the St. Paul Company in the 10th Section hereof.

Thirteenth. It is further mutually understood and agreed by and between the Associates and the St. Paul Company that if at any time a difference of opinion shall arise between them in respect to the rights and duties of either of them under this Indenture, the question in dispute shall be referred to a Board of Arbitrators, consisting of three competent, disinterested persons, one to be chosen by the Associates, one by the St. Paul Company, and the two so chosen to choose a third. The party desiring such arbitration shall give written notice of the same to the other party, setting forth therein definitely the points in dispute, and naming the per-

son selected by such party to act as arbitrator. If the party on whom such notice is served shall for fifteen days thereafter neglect to name a person to act as arbitrator, then the party giving such notice shall name a second arbitrator, and the two so chosen shall choose a third. The Board of Arbitrators so chosen shall immediately proceed to hear and determine all matters submitted to them, after giving to each party not less than five days notice of the time and place of meeting, and at the time and place appointed shall proceed summarily to hear and dispose of the matter in dispute, unless, in their judgment, the hearing should be postponed to a later day or days, of which adjourned meeting like notice shall be given, unless such notice shall be waived by both parties, in which case the hearing may proceed at an earlier date. The determination of such Board of Arbitrators, or of a majority of them, as to any matter so submitted to them shall be absolute, final and conclusive upon the parties hereto, and such parties shall abide by such decision and perform the conditions thereof as if the same were made a part of this Indenture.

Lastly. It is mutually understood and agreed by and between all the parties hereto that at any termination of this agreement each party shall be released from all obligation or liability to the others, except for the payment or delivery of any balances of money or shares of stock then due under the terms of this agreement.

In Witness Whereof, the Associates and the Trustee have hereto set their hands and seals, and the St. Paul Company has caused these presents to be executed by its President, thereto duly authorized, and its corporate seal to be hereto affixed and properly attested, the day and year first above written.

FREDERICK M. HUBBELL. (Seal)  
FREDERICK M. HUBBELL & SON. (Seal)

CHICAGO, MILWAUKEE & ST. PAUL  
RAILWAY CO.,

(Seal)

By Roswell Miller, President.

Attest: F. M. Myers, Secretary.

Roswell Miller, Trustee. (Seal)

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### Exhibit "R."

This Agreement of ratification and confirmation, entered into this 31st day of July, 1897, between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter called the

Des Moines Company, the Wabash Railroad Company, a corporation organized and existing under the laws of the state of Missouri, and hereinafter called the Wabash Company, and the Des Moines Northern & Western Railroad Company, a corporation organized and existing under the laws of the state of Iowa, and hereinafter called the Des Moines, Northern & Western Company, Witnesseth that:

Whereas, on the 10th day of May, 1889, the said Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, entered into a certain contract, a copy of which, for complete identification, is hereto attached, marked Exhibit "A"; and,

Whereas, the said Wabash Company is not named in said contract, and now operates the Des Moines & St. Louis Railroad; and

Whereas, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company have ceased to own or operate the respective railroads which were owned and operated by them at the time the said contract was made, and the said Des Moines, Northern & Western Company has become the owner of and operates the lines of railroad which were formerly owned and operated by the said Des Moines & Northwestern Railway Company and the said St. Louis, Des Moines & Northern Railway Company; and

Whereas, for a long time past both the Wabash Company and the Des Moines, Northern & Western Company have been using the terminal property described in said contract, and all the parties have recognized the said contract as continuing and binding upon them; and

Whereas, it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines, Northern & Western Company;

Now Therefore, in consideration of the premises, and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Wabash Company and the Des Moines, Northern & Western Company.

And the said Wabash Company for itself agrees to make the payments therein provided for at the times and in the manner prescribed for the said Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the said Des Moines & St. Louis Company its obligation to so pay, and all the obligations herein assumed by it, shall at once determine and be and become the obligations of whatever company operates the said railroad, it being the intention that the obligations of the said contract, so far as they pertain to the Des Moines & St. Louis Railroad Company, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property leased in the said contract, to assume all the obligations therein or hereby undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein and as though it had been named in and was a party to the said contract when originally made, and to pay to the said Des Moines Company at the times and in the manner therein prescribed the sums of money which may become due, computed according to the terms and provisions of the said contract with respect to a tenant company; and the said Des Moines, Northern & Western Company further agrees that the obligations therein named and hereby assumed shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee, or successor of the said Des Moines, Northern & Western Company in the ownership or operation of the said Des Moines, Northern & Western Railroad, and any company succeeding the Des Moines & Western Company in such ownership or operation shall be held by the operation of trains over the said Des Moines Northern & Western Railroad, and upon the property leased in the said contract, to assume all the obligations therein expressed and herein undertaken by said Des Moines, Northwestern & Western Company.

But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:

The purchasing committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.

The Des Moines Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares.

Of the above shares belonging to said purchasing committee two shares stand upon the books of the company as follows: Joseph Ramsey, Jr., 1 share; and H. L. Magee, 1 share.

Of the shares belonging to the Des Moines Northern & Western Railroad Company two shares stand upon the books of the company as follows: A. B. Cummins, 1 share; and F. M. Hubbell, 1 share.

Of the shares belonging to said F. M. Hubbell & Son, five shares stand upon the books of the company as follows: F. M. Hubbell, 1 share; F. C. Hubbell, 1 share; C. Huttenlocher, 1 share; H. D. Thompson, 1 share; A. N. Denman, 1 share.

In Witness Whereof, The respective parties hereto have caused these presents to be signed by their respective presidents and sealed with their corporate seals, and attested by their respective secretaries, the day and year first above written.

THE WABASH RAILROAD COMPANY,

(Seal)

By O. D. Ashley, President.

Attest: J. C. Otteson, Secretary.

DES MOINES UNION RAILWAY COMPANY,

(Seal)

By F. C. Hubbell, President.

Attest: F. M. Hubbell, Secretary.

DES MOINES NORTHERN & WESTERN RAILROAD COMPANY,

(Seal)

By F. M. Hubbell, President.

Attest: A. N. Denman, Secretary.

(Here follows Exhibit "A" of the above Terminal Contract, which is a copy of the Terminal Contract of May 10, 1889, heretofore attached by copy to this Bill as Exhibit "P").

J. C. COOK,

J. P. HEWITT,

Solicitors for Complainants.

J. C. Cook, of Counsel.

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United States of America,  
Southern District of Iowa—ss.

I, Wm. C. McArthur, Clerk of the District Court of the United States, for the Southern District of Iowa, as the successor of the Clerk of the Circuit Court of the United States for the Southern District of Iowa, hereby certify the above and foregoing to be a full, true and complete copy of the Amended Bill of Complaint filed May 12th, 1909, in cause No. 16-M. Eq. (C. C.) old number 2449 Eq., wherein the Chicago, Milwaukee & St. Paul Ry. Co., et al., are complainants, and the Des Moines Union Railway Co., et al., are defendants, as amended by an order of Court entered in said cause on May 25, 1910, as full, true and complete as the original thereof now on file in my office in the City of Des Moines, in said District.

In Witness Whereof, I hereunto set my hand and affix the seal of said Court at my office in the City of Des Moines, in said District, this 20th day of November, A. D. 1912.

(Seal)

WM. C. McARTHUR,  
Clerk as aforesaid.







*(Subpoena in Chancery to Des Moines Union Ry. Co. et. al.)*

UNITED STATES OF AMERICA,

*Central Division*

*Southern District of Iowa;*

The President of the United States to The Des Moines Union Railway Company, Frederick H. Hubbell and Frederick C. Hubbell and F. M. Hubbell & Son:

We command you, and each of you, that you appear before the Judge of the Circuit Court of the United States for the Southern District of Iowa, at Des Moines on the 7th day of June A. D. 1909 to answer to the bill of complaint of The Chicago, Milwaukee & St. Paul Railway Company and The Wabash Railroad Company this day filed in the office of the clerk of said Court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To The Marshal of the Said Southern District of Iowa. Returnable twenty days from the date hereof, to-wit, on the 7th day of June A. D. 1909.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, Southern District of Iowa, at the city of Des Moines, Iowa, this the 12th day of May A. D. 1909, and of the Independence of the United States the 134th.

[SEAL.]

EDWARD R. MASON,

*Clerk U. S. District Court, Southern District of Iowa.*

By ———, Deputy.

Memorandum.—The within named defendants are notified that unless they file an answer or other defense in the Clerk's office of said Court on or before the twentieth day after service hereof, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

[SEAL.]

EDWARD R. MASON,

*Clerk U. S. District Court, Southern District of Iowa.*

By ———, Deputy.

This writ came into my hands for service on [on] the 15th day of May 1909 and I served the same on the within named persons as follows, to-wit:

On Frederick M. Hubbell on the 15th day of May 1909 by delivering to . . . a true copy of this writ at . . .

On Frederick C. Hubbell on the 15th day of May 1909 by delivering to him a true copy of this writ at . . .

On F. M. Hubbell & Son on the 15th day of May 1909 by delivering to him a true copy of this writ at . . .

On . . . on the . . . day of . . .  
by delivering to F. M. Hubbell Des Moines, Iowa, in . . .  
the said F. M. Hubbell being a member of  
the said firm.

On . . . on the . . . day of . . .  
191 . . . by delivering to . . . at the dwelling  
house or usual place of abode of the said . . .  
in . . . the said . . . being an  
Adult person, and a member or resident in the family of the said  
. . .

#### Marshal's Fees:

Mileage . . . . .	Miles	At	005	\$	005
Service on . . . . .	At	2 000		\$	000
					8,005

FRANK B. CLARK,

*C. S. Marshal*

FRANK A. NICHOL,

*Deputy*

Endorsed: Filed in the District Court on May 19, 1909.

*(Answer to Amended Bill of Complaint.)*

To the Honorable Judges of the Said Circuit Court:

The respondents, for their answer to the amended bill of complaint in the above entitled cause, respectfully show to the court as follows to-wit:

Paragraph 1. They admit that the complainant, the Chicago, Milwaukee & St. Paul Railway Company, is a citizen of the state of Wisconsin, and that the complainant, the Wabash Railroad Company, is a citizen of the state of Ohio, and that each of the respondents, the Des Moines Union Railway Company, Frederick M. Hubbell and Frederick C. Hubbell, is a citizen of the central division of the southern district of Iowa.

Paragraph 2. These respondents admit that on or about the 15th day of December, 1880, the respondent, Frederick M. Hubbell, with Jefferson S. Polk, James S. Clarkson and John S. Rinnells, organized the Des Moines & St. Louis Railroad Company (hereinafter for convenience designated as the St. Louis Company) as a corporation under the laws of the state of Iowa, to construct a railroad from a connection with the railroad of the Wabash, St. Louis & Pacific Railway Company (hereinafter for convenience designated as the original Wabash Company) at Albia, in the state of Iowa, to the city of Des Moines, in the said state, and that said railroad was so constructed.

These respondents aver that the St. Louis Company was so organized pursuant to a contract between the parties above named and the Original Wabash Company, and that the St. Louis Company was at all time controlled by the Original Wabash Company and managed in its interest and pursuant to instructions received from its officers.

Paragraph 3. These respondents further aver that prior to June, 1897, a corporation had been organized under the laws of Iowa known as the Des Moines, Adel & Western Railroad Company, and aver that on or about the 27th day of September, 1880, the name of the said company was changed, by an amendment to its articles of incorporation, to Des Moines Northwestern Railway Company (hereinafter for convenience designated as the Northwestern Company), and admit that at that time the respondent, Frederick M. Hubbell, was interested in the said company.

These respondents aver that the said Northwestern Company was organized for the purpose of building a railroad from the town of Wankee, in Iowa, northwesterly, and that it built such a railroad and acquired from the St. Louis, Des Moines & Northern Railway Company, hereinafter referred to, a line of railroad from Wankee to Clive and a one-half interest in a line of railroad from Clive to the city of Des Moines.

These respondents further admit that the Original Wabash Company leased and operated the lines of the St. Louis Company and the Northwestern Company.

Paragraph 4. These respondents admit that on or about the 4th day of April, 1881, the respondent, Frederick M. Hubbell, and others,

organized a corporation under the laws of the state of Iowa, known as the St. Louis, Des Moines & Northern Railway Company (hereinafter for convenience designated as the Northern Company), for the purpose of constructing a line of railroad from Des Moines through Clive to Boone and from Clive a connection with the Northwestern Company at Waukee, and that said railroad was constructed by the said company.

That from and after the organization of the said Northern Company, one Grenville M. Dodge became and was the controlling factor in the said company, and that the interest of the respondent, Frederick M. Hubbell, therein was insignificant, and that in the construction of the railroad of the said Northern Company the Original Wabash Company co-operated with the said Dodge.

Paragraph 5. These respondents further aver that the St. Louis Company, the Northwestern Company and the Northern Company were, in the first instance, all organized in the interest of the Original Wabash Company and were, in effect, corporations subsidiary to it, and continued so to be until after the insolvency of the Original Wabash Company in 1884.

Paragraph 6. That the property of the Northern Company was about the year 1889, acquired by the Des Moines & Northern Railway Company, and thereafter, on or about the 11th day of December, 1891, the railroads of the Northwestern and Northern companies were consolidated and were acquired by a corporation organized under the laws of the state of Iowa and known as the Des Moines, Northern & Western Railway Company. That Exhibit number 1, hereto attached and made a part hereof, shows the railroad of the Original Wabash Company from St. Louis to Albia, the railroad of the St. Louis Company, and the railroads of the Northern and Northwestern companies as they existed at the date of said consolidation.

Paragraph 7. These respondents admit that the contract, of which Exhibit "A" to the said amended bill is a copy, was duly executed and delivered by the parties hereto; they admit that Exhibit "B" to the said amended bill is a correct copy of the original articles of incorporation of the Des Moines Union Railway Company, one of the respondents; they admit that Exhibit "C" to the said amended bill is a correct copy of certain preambles and a portion of certain resolutions adopted by the board of directors of the Des Moines Union Railway Company at its first meeting; they admit that Exhibit "D" to said bill is a portion of a record of a meeting of the stockholders of the Northern Company held on January 1, 1885; they have no knowledge or information sufficient to form a belief as to the transactions which Exhibit "E" to said bill purports to record; they admit

that Exhibit "F" is a correct copy of certain pretables and resolutions adopted at a meeting of the stockholders of the Northwestern Company on January 1, 1885, except that in the fifth line from the bottom of page 18 as said exhibit appears in said amended bill, omitted the word "any" after "transfer" should be omitted and in lieu thereof there should be inserted the words "to said company all its right and title," and except further that the said exhibit does not contain a complete record of the proceedings of the said meetings these respondents have not knowledge or information sufficient to form a belief as to whether or not Exhibits "G" and "H" are correct copies of the records of which they purport to be copies; these respondents admit that notices were served on the Des Moines Union Railway Company, of which Exhibits "I," "J" and "K" to the bill are substantial copies, except that the words "three-fourths" in Exhibit "K" in the third line from the bottom of page 26 in the printed bill should be "one-half;" they admit that each of the exhibits "L," "M," "N," "O," "P," "Q," and "R" was duly executed and delivered on or about its date, and that said exhibits are correct copies, except that in Exhibit "R" in the second line from the top of page 56 in the exhibits to said amended bill as printed the word "Northern" should be inserted.

Paragraph 8. These respondents further admit that in the year 1884 the Original Wabash Company became insolvent and that foreclosure proceedings were instituted against it by the Central Trust Company of New York, but as to the details of the said foreclosure proceedings these respondents have not knowledge or information sufficient to form a belief.

These respondents admit that to protect the interests of certain stockholders, a purchasing committee was constituted, consisting of Dean D. Ashley, James F. Joy, Thomas H. Hubbard and Edgar T. Miles, and admit that with the said committee a large majority of the outstanding general mortgage bonds were deposited, under an agreement between the said committee and the holders of the said bonds, but deny that the terms of the said agreement are correctly set forth in the bill.

These respondents further admit that the complainants are the owners of large railway systems and that it is of importance to them, in connection with the operation of the portions of these systems which reach the city of Des Moines, that they should have adequate terminal facilities in the said city.

Paragraph 9. These respondents deny that the agreement, Exhibit "A" was made for the purposes alleged in the amended bill, and

aver that the said agreement was tentative only and that at the time the said contract was signed, the parties thereto had not completed any definite or certain plan as to the terminal property in Des Moines or its ownership, and aver further that it was not either the purpose or the effect of the said contract, Exhibit "A," to evidence any such definite or completed plan.

Paragraph 10. That at the time of the execution of the said agreement, Exhibit "A," the Original Wabash Company was operating the railroads of the St. Louis Company and the Northwestern Company and was also operating the terminal property in the city of Des Moines, and that it continued to operate the said terminal property until about the 1st day of May, 1888, as hereinafter set out.

Paragraph 11. That upon the insolvency of the Original Wabash Company, in the year 1884, it appeared to all of the parties interested in the property involved in the said agreement, Exhibit "A," that it was for their interest to have the said property owned, controlled and operated by a separate and independent corporation, and to that end the respondent, the Des Moines Union Railway Company, was organized by the parties interested in the said agreement, Exhibit "A," for the purpose of acquiring, owning and operating the terminal property referred to in the said contract, Exhibit "A," so that said company might be able to lease terminal facilities in the city of Des Moines to the St. Louis Company, the Northern Company and the Northwestern Company, and to such other railroads as might desire to acquire the right to use its terminal property.

That in furtherance of this purpose, the board of directors of the Des Moines Union Railway Company, at its first meeting, adopted certain preambles and resolutions, copies of which are as follows:

Whereas, The Des Moines and St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, the Des Moines, Northwestern Railway Company, G. M. Dodge and Jas. F. Hebo, both in his individual right and as trustee under this contract mentioned and set out in the Articles of Incorporation of this Company have by their officers and by themselves, personally notified the Company that they have each for themselves approved of the organization of this Company, and have directed their officers, agents or trustees to surrender and deliver to this Company the railroad property and franchises mentioned in said contract, and requested it to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in said contract, and the said railway companies and individual signatories have indicated

their desire and purpose to transfer said property to this company in accordance with the terms of said contract:

Whereas, It is desirable that this Company should at once take possession of said property and maintain, control and operate the same, and that it should procure all necessary conveyances and transfers of the same as soon as practicable, and make provisions for and pay for said property so proposed to be conveyed to it:

Now, therefore, be it,

Resolved, First, That this Company accepts the transfer and management and operation of said property in the City of Des Moines, East of Farnham street in said City, heretofore owned and controlled by the Des Moines & St. Louis Railroad, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as practicable, and it hereby instructs its President to make such order as may be necessary to render such control and management effective, as provided in said contract.

Second, That the President, Vice-President, Secretary and Treasurer of this Company be and they are hereby appointed a committee to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said properties provided for in said contract of January 2, 1882.

Third, That to enable this Company to pay for the property and maintain, operate and improve the same, and purchase other property necessary to carry out its objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same, the President and Secretary of this Company are hereby authorized and directed to issue full-paid capital stock of this Company, not to exceed One Million Dollars (\$1,000,000.00) and not to exceed five hundred (500) bonds of this Company, of the denomination of One Thousand Dollars (\$1,000.00); the form to be agreed upon hereafter by this Board.

And to secure said bonds, the President and Secretary are authorized and directed to execute, in the name of this Company, a first

mortgage or deed of trust, conveying all of said property so to be conveyed to this Company or thereafter to be acquired to a trustee therein named, the form of which deed of trust shall be hereafter determined by this Board.

And when the said committee shall have agreed with the said several parties to said contract as to the amount of bonds and stock of this Company necessary to be delivered to them, and each of them, in payment for said railroad property and franchises, the President and Secretary of this Company shall deliver the same to said several parties as each shall appear to be entitled, on receipt of the conveyances and assignments of said property so to be made to this Company.

The remainder of said bonds and stocks so authorized to be issued shall be, by order of this Board, signed and issued from time to time as they may be needed for the purposes of the resolutions above set out authorizing their issuance, and for no other purpose.

Fourth, That said committee shall from time to time report to this Board their acts and doings under the foregoing resolution.

Resolved, That G. M. Dodge, the President of this Company, or such officer or director as he may designate, be authorized to negotiate with any railway company whose lines extend into Des Moines, or which may wish to acquire the right to use any part of the property of the Company with authority to make and fix any terms upon which such right may be acquired or enjoyed, subject to the approval of the Board of Directors of this Company and to the limitations imposed by its Articles of Incorporation.

That the said preambles and resolutions were adopted by the unanimous vote of all persons interested in any way in the said contract, Exhibit "A," or in the property described therein.

That in furtherance of the purposes aforesaid, the resolutions, Exhibits "D," "F" and "G," were passed by the stockholders of the Northern, Northwestern and St. Louis companies respectively on the 1st of January, 1885, accepting the organization of the Des Moines Union Railway Company and directing the conveyance of the terminal property in question to it.

Paragraph 12. That the Original Wabash Company, through its receiver and purchasing committee, continued to control and operate both the St. Louis and Northwestern companies until the year 1887, and no steps were taken to consummate the sale of the terminal property to the Des Moines Union Railway Company until about the year



1887, when the purchasing committee sold the property of the Northwestern Company.

That after such sale had been made, and on or about the 8th of November, 1887, James F. How, one of the parties to the agreement, Exhibit "A," a vice-president of the Original Wabash Company and its chief executive officer in the west and also the general agent of the receivers of the said company, caused certain preambles and resolutions to be unanimously adopted at a meeting of the board of directors of the Des Moines Union Railway Company. The said Preambles recited action upon the part of the Northern Company, the Northwestern Company and the St. Louis Company, authorizing the adoption of the resolutions, which resolutions were as follows:

Therefore It Is Resolved, That on receipt from the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railway Company and from James F. How, Trustee, and G. M. Dodge, of deeds to this Company of the property standing in their name in the city of Des Moines, that the officers of this Company be authorized to issue to said James F. How and G. M. Dodge, respectively, an agreement to deliver to them, as soon as prepared, bonds for the amount of money, with interest and taxes added, which will be shown by them, at that time, to have been expended by or through them for or on the property referred to.

The agreement for the delivery of bonds to be turned over to James F. How, Trustee, to state that the same are for the benefit of the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company; also that the agreement issued by the officers of this Company shall state that certificates can be prepared, and the officers of the Company will issue to the St. Louis, Des Moines & Northern Railway Company certificates for one-fourth of the stock of the Company, and to James F. How, Trustee, to be delivered to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, certificates for three fourths of the stock of the Company.

Resolved, That the officers of the Company, on receipt of deeds referred to in the foregoing resolution, shall place the same on record, and prepare mortgages upon all the property of this Company, then owned or to be hereafter acquired, to secure not to exceed eight hundred thousand dollars of bonds, principal and interest payable in gold, to be issued by this Company. Said bonds to be for one thousand dollars each, dated November 1, 1887, and falling due fifty years from date, and bearing interest at the rate of five per cent per annum, payable semi-annually.

Resolved, That the officers of this Company be authorized, on the execution of said mortgage, to cause to be prepared and executed, bonds in conformity with the same, the amount required to be used in payment for the property, as provided in the foregoing resolution.

That the resolutions, Exhibits "E" and "H," adopted by the directors of the Northern Company and the St. Louis Company respectively, directing the transfer of the terminal property to the Des Moines Union Railway Company, were adopted as a part of this same transaction, and in the same connection the notices, Exhibits "I," "J" and "K," were given by the St. Louis Company, the Northern Company and the Northwestern Company respectively to the Des Moines Union Railway Company, advising the last named company that the holders of the property in question had been authorized and directed to convey it to the Des Moines Union Railway Company under the terms stated in the said resolution adopted November 8, 1887, and hereinbefore set out.

That thereafter and pursuant to said resolution, the said property was conveyed to the Des Moines Union Railway Company by the deeds, Exhibits "L," "M," "N" and "O," and by deeds duly executed and delivered to the Des Moines Union Railway Company by the Northern Company, the St. Louis Company and the Northwestern Company.

That further pursuant to said resolutions, the Des Moines Union Railway Company executed and delivered its trust deed referred to in paragraph twelve of the amended bill, and executed and delivered its bonds in part payment for the property so acquired by it, and later issued and delivered its capital stock in completion of the payment for said property.

Paragraph 13. These respondents admit that the description of the property conveyed by the said trust deed is, with the exception of a few minor errors, correctly set out in paragraph twelve of the said bill, and admit that the said trust deed was duly authorized and approved by the St. Louis Company, the Northern Company and the Northwestern Company and by the receivers and purchasing committee of the Original Wabash Company, and admit that the said trust deed was and is a first lien upon the property described therein and that none of the bonds secured thereby have been paid.

These respondents aver further; that the said bonds have been sold generally upon the market and are held by numerous investors, to these respondents unknown, and that among other things the said bonds have been issued and negotiated upon the faith of the said trust deed which contains among others the following recitals:

Whereas, the Des Moines Union Railway Company has undertaken and partially completed the construction of a railroad in the City of Des Moines, Polk County, Iowa, extending from the main lines of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company to a connection with and across the lines of various other railroads which center or terminate in the said City of Des Moines, and to various manufactories and industries in said city, and has purchased and owns various structures and buildings used for depots, railway shops, round houses and other structures suitable and useful for railway purposes, and has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said city, and valuable franchises from the City Council of said city; and,

Whereas, for the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds to the amount of eight hundred thousand (\$800,000) dollars, etc.

Paragraph 14. That shortly after the execution of the said trust deed, and on or about the 1st day of May, 1888, the possession of the said terminal property was turned over to the Des Moines Union Railway Company, and ever since that time the Des Moines Union Railway Company has exercised undisputed possession, control and dominion over the said property and has maintained and operated the same.

These respondents deny that it was intended that the respondents, the Des Moines Union Railway Company, should take title to the said property as trustee for the complainants; and aver that it was intended that it should, and that it did, in fact, take title to the said property in fee absolutely for its own sole use and benefit; they specifically deny that nothing was ever paid on account of the shares of the capital stock of the Des Moines Union Railway Company;

and deny that it was intended that nothing should be paid for the same; and deny that the intention was that such shares should have no value; and deny the averment that the said Des Moines Union Railway Company has no capital or assets; and deny the averment that it was never intended that it should have any capital or acquire or own any property or assets in its own right; and deny that the Des Moines Union Railway Company was organized or that it exists for the purposes stated in the bill as amended; but, on the contrary, aver that it was organized and exists for the purposes stated in its original and amended articles of incorporation. These respondents further aver that the Des Moines Union Railway Company has at all times been recognized by the complainants as the absolute owner of the property in question, and that it has made large expenditures in connection with the said property in reliance upon its ownership thereof, and that the capital stock of the said company has at all times been recognized by the complainants and their assignors as fully paid stock, issued as evidence of the interests of its owners in the management, profits and ultimate assets of said Des Moines Union Railway Company, and that it has been at all times bought and sold and treated by the complainants and their assignors as property of value.

That by virtue of the premises, the complainants are now estopped from setting up that the Des Moines Union Railway Company does not own the property in question, and from setting up that the said property is held in trust for their benefit, and from setting up that its stock is not of value or that said stock does not represent any interest in the property of the said corporation; and that by reason of their laches and long acquiescence and delay, the complainants cannot now be heard to assert or set up the said matters or either of them.

Paragraph 15. These respondent further respectfully show to the court that on or about the 10th day of May, 1889, the St. Louis Company, the Northern Company and the Northwestern Company entered into a formal written agreement of lease with the Des Moines Union Railway Company, of which Exhibit "P," to the amended bill is a copy, and that the said agreement was confirmed and ratified by the successors to the original parties thereto as binding upon such successors by the agreement of which Exhibit "R," attached to said bill is a copy, in which last mentioned agreement the ownership of the five-eighths of the capital stock of the Des Moines Union Railway Company owned by F. M. Hubbell & Son was expressly recognized and confirmed in them.

That by the said agreement the complainants expressly and affirmatively recognized the Des Moines Union Railway Company as the owner of the terminal property now in controversy and recognized and attorned to said company as their landlord, and assumed the position of tenants under the said contracts, and leases for the said property, and that ever since the making of the said contract of May 10, 1889, Exhibit "P" to the amended bill, the occupation of the terminal property by the complainants and their predecessors in interest has been under and by virtue of the said contracts; that said contracts have been accepted by all parties in interest as defining and fixing such rights as the complainants had with reference to the use and occupation of the said property, and that the complainants are estopped from denying the title of the Des Moines Union Railway Company to the said property, and are estopped from asserting that the rights of the parties in and to the said property are not fixed by the said contracts.

Paragraph 16. These respondents aver that the firm of F. M. Hubbell & Son never acquired a majority of the capital stock of the Des Moines Union Railway Company until about the 29th day of January, 1894, and that the said stock was acquired at that time by them for a valuable consideration from the Des Moines, Northern & Western Railway Company, with the knowledge and approval of all of the stockholders of the said company, and that the transfer of the said stock to the said F. M. Hubbell & Son was approved by all parties in interest by a contract of which Exhibit "R" to the amended bill is a copy, and that said stock was transferred to F. M. Hubbell & Son by the Des Moines Union Railway on or about the 4th day of October, 1893, and from and after the said transfer was held and voted by the said F. M. Hubbell & Son at all meetings of the Des Moines Union Railway Company, down to the commencement of this suit, with the knowledge and approval of each and every stockholder in the Des Moines Union Railway Company. These respondents aver that the said stock was ~~acacquired~~ acquired long after the amendments to the articles of incorporation of the Des Moines Union Railway Company referred to in the amended bill had been adopted, and that the two transactions were wholly and entirely independent of each other.

Paragraph 17. Answering the allegations of the amended bill with reference to the amendments to the articles of incorporation of the Des Moines Union Railway Company, and the acquisition of certain stock therein by the respondent, Frederick M. Hubbell, these respondents respectfully show to the court that prior to the acquisition of any of said stock by the said respondent, and on the 3d of January, 1890, the said James F. How caused a resolution to be adopted by the board of directors of the Des Moines Union Railway Company, referring to the general solicitor and local attorney of The Wabash Railroad Company, who were both then directors of the Des Moines Union Railway Company, the question of amending its articles of incorporation.

That thereafter, and on or about the 5th of February, 1890, the respondent, Frederick M. Hubbell, acting in behalf of himself, and Grenville M. Dodge agreed to purchase from the said purchasing committee one hundred and thirty-five bonds of the Des Moines Union Railway Company and one-fourth of its capital stock, and that pursuant to the said agreement separate contracts were made by the said purchasing committee with the said Hubbell and the said Dodge, under which said purchasing committee agreed to sell to the said Hubbell sixty-seven of said bonds and one-eighth of said stock, and to the said Dodge sixty-eight of said bonds and one-eighth of said stock, the said purchasing committee agreeing to consent to an amendment to the articles of incorporation of the Des Moines Union Railway Company which should permit the owner of one-eighth of its stock to nominate one director.

That thereafter, and on the 8th day of April, 1890, the stockholders of the Des Moines Union Railway Company, at a meeting at which the holders of all of its stock were present, including the respondents, the respondents being at that time minority stockholders, unanimously adopted substitutes for articles 1, 2, 3, 4, 5 and 9 of the articles of incorporation of the said company, and additional articles 11, 12, 13, 14 and 15. That article 15 of the additional articles so adopted was as follows.

Article 15. The proceedings of a meeting held December 10th, 1884, with certain preambles including a contract executed on the 2d day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines, Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, entered into by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the articles of incorporation of the company, are hereby repealed, stricken out and expunged.

That the said article 15 was adopted upon the motion of the then general manager of The Wabash Railroad Company by the unanimous vote of all of the stockholders of the Des Moines Union Railway Company, including all persons in any way interested, directly or indirectly, in the property described in the contract of January 2, 1882. That a copy of the said articles of incorporation as so amended is herewith attached and made a part hereof, marked Exhibit 2.

That the purchase so made by the said Frederick M. Hubbell from the purchasing committee was approved by the Des Moines Union Railway Company and by the St. Louis Company, such approval in each instance being evidenced by a vote of the board of directors of the company in question, and being had pursuant to the original agreement with the said purchasing committee for the sale of the said stock, with the knowledge, acquiescence and consent of all parties interested and upon the motion of the representatives of the said purchasing committee.

That thereafter, and on or about the 5th day of June, 1890, the respondent, Frederick M. Hubbell, purchased additional bonds and an additional one-eighth of the capital stock of the Des Moines Union Railway Company from the said purchasing committee, which purchase was likewise ratified and confirmed by both the St. Louis Company and the Des Moines Union Railway Company, such ratification and confirmation being pursuant to the contract for the purchase of the said stock and with the knowledge and acquiescence of all parties interested in the property now in controversy.

These respondents further respectfully show to the court that on or about the 1st day of January, 1892, the respondent, Frederick M. Hubbell, sold the two-eighths of the stock of the Des Moines Union Railway Company so purchased by him to the Des Moines, Northern & Western Railway Company.

Paragraph 18. These respondents further respectfully show to the court that at the time of the transactions in question the Des Moines & St. Louis Railroad Company was dominated and controlled by the Original Wabash Company and its receivers, and the purchasing committee, and not by the respondent, Frederick M. Hubbell, or by either or all of the respondents in this case, and further deny that the election of the respondent Frederick M. Hubbell, as secretary of the Des Moines Union Railway Company had any connection whatever with the transactions alleged in the complainants' bill, but aver that the said Hubbell was named as secretary of the said company in its original articles of incorporation, and ever since its organization has been elected and re-elected as its secretary by the unanimous vote of all of its directors at the annual meetings as they have been held.

These respondents further respectfully show to the court that the said amendments to the articles of incorporation of the Des Moines Union Railway Company were not the result of any conspiracy or confederation or fraudulent design or scheme of any kind or character whatsoever, and aver that the said amendments were made with the knowledge of all persons either directly or indirectly interested in the said Des Moines Union Railway Company, and with the knowledge of all persons either directly or indirectly interested in the said contract, Exhibit "A," of date January 2, 1882, and that all of said persons concurred in and voted for each and every of the said amendments with full knowledge of all the facts and circumstances.

Paragraph 19. That the sale made by the Des Moines, Northern & Western Railway Company to F. M. Hubbell & Son of five-eighths of the capital stock of the Des Moines Union Railway Company, which has been hereinbefore referred to, occurred prior to the making of the contract Exhibit "Q" to the amended bill of complaint, and prior to the acquisition by the complainant, the Chicago, Milwaukee & St. Paul Railway Company, of any right, title or interest in or to either the property or the stock of the Des Moines, Northern & Western Railway Company, and that at the time that the Chicago, Milwaukee & St. Paul Railway Company purchased from F. M. Hubbell & Son and Frederick M. Hubbell the stock and bonds of the Des Moines, Northern & Western Railroad Company, hereinafter referred to, the said Chicago, Milwaukee & St. Paul Railway Company knew that the said F. M. Hubbell & Son owned five-eighths of the capital stock of the Des Moines Union Railway Company and that the Des Moines, Northern & Western Railroad Company was the owner of only one-fourth of the said capital stock.

Paragraph 20. These respondents admit that on or about the 15th day of March, 1894, the Des Moines, Northern & Western Railroad Company entered into the agreement with the Chicago, Milwaukee & St. Paul Railway Company, of which Exhibit "Q" to the amended bill is a copy, and aver that the said Frederick M. Hubbell and F. M. Hubbell & Son became parties to said contract in order to induce the complainant to make the traffic agreement which is referred to in said Exhibit "Q".



These respondents admit that after the making of the said agreement, Exhibit "Q," the trust deed given by the Des Moines, Northern & Western Railway Company and referred to in the said contract was foreclosed, and the property embraced in the said foreclosure was acquired by the Des Moines, Northern & Western Railway Company, a corporation organized under the laws of the state of Iowa. These respondents deny that by virtue of the said foreclosure and the proceedings subsequent thereto the Des Moines, Northern & Western Railroad Company acquired any interest in the five-eighths of the capital stock of the Des Moines Union Railway Company which had been sold to F. M. Hubbell & Son by the Des Moines, Northern & Western Railway Company.

These respondents admit that upon the organization of the Des Moines, Northern & Western Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company surrendered the stock of the Des Moines, Northern & Western Railway Company which it had held under the contract, Exhibit "Q," and received in lieu thereof a like proportion of the stock of the Des Moines, Northern & Western Railroad Company, and that stock of the said Des Moines, Northern & Western Railroad Company continued to be delivered to the Chicago, Milwaukee & St. Paul Railway Company pursuant to the terms of the said contract, Exhibit "Q," until about December, 1918.

Paragraph 21. That on or about the 29th day of December, 1898, and prior to the expiration of the term of the contract, Exhibit "Q," the complainant, the Chicago, Milwaukee & St. Paul Railway Company, purchased from F. M. Hubbell & Son and from Frederick M. Hubbell two thousand one hundred and fifty (2,150) bonds of the Des Moines, Northern & Western Railroad Company and thirteen thousand nine hundred and twenty-nine (13,929) shares of the capital stock of the said company, constituting all of the bonds and stock of said company owned by the said F. M. Hubbell & Son and Frederick M. Hubbell, for the sum of one million eight hundred and twenty-seven thousand five hundred dollars (\$1,827,500.00) and accepted said purchase as a full and complete performance of the contract, Exhibit "Q," and endorsed upon the said contract, Exhibit "Q," a memorandum to the effect that it had been fully performed.

Paragraph 22. That at the time the Chicago, Milwaukee & St. Paul Railway Company so purchased the said stock and bonds from the said F. M. Hubbell & Son and Frederick M. Hubbell, it was fully advised as to the articles of incorporation of the Des Moines Union Railway Company and the amendments made thereto from time to time, and as to the contract of May 10, 1899, Exhibit "P"

to the amended bill, and as to the contract of date July 1, 1897 Exhibit "R" to the amended bill, and, as heretofore set out, that the Des Moines, Northern & Western Railroad Company owned only one-fourth of the capital stock of the Des Moines Union Railway Company and that F. M. Hubbell & Son were the owners of the rights of its capital stock, and that the only rights of the Des Moines, Northern & Western Railroad Company in or to the terminal property in question were those arising out of the said contracts, Exhibits "I" and "R".

Paragraph 23. These respondents further respectfully show to the court that ever since the execution of said Exhibits "I" and "R" the complainants and their predecessors in interest have accepted the said contracts as binding and in full force and effect in all respects and have made payments for the use of the terminal facilities furnished to them pursuant to said contracts.

That the complainants and their predecessors have, ever since the organization of the Des Moines Union Railway Company, participated in its management and control of the property in question, as its stockholders and through their representatives elected as members of the board of directors of the Des Moines Union Railway Company, and have in all respects recognized the Des Moines Union Railway Company as a corporation owning and operating the terminal property that is in controversy in this case.

Paragraph 24. These respondents admit that the Des Moines Union Railway Company has now issued and outstanding four thousand shares of its capital stock, and that F. M. Hubbell & Son hold certificates for twenty-five hundred of said shares and that the Chicago, Milwaukee & St. Paul Railway Company holds certificates for one thousand of said shares. They admit further that H. D. Thompson, a brother-in-law, Grover C. Hubbell, a son, and S. T. Gurnsey, an attorney for Frederick M. Hubbell are members of the board of directors of the Des Moines Union Railway Company. They aver that in each instance where the parties named have been elected members of the said board, they have been elected by the unanimous vote of all of the stock, including that held by the complainants and their predecessors.

Paragraph 25. These respondents admit that the Des Moines Union Railway Company and these respondents as stockholders in the said company have claimed and asserted, ever since the Des Moines Union Railway Company acquired the said terminal property as heretofore set out, that it was the owner of the same and had all of the rights in the said property which were incident to or arose out of such ownership, and aver that prior to the commencement of this suit its said claims of ownership were undisputed in

the complainants and their predecessors, and that prior to the commencement of this suit no claims had ever been made by anyone under the said contract of 1882, after the terminal property in question was conveyed to the Des Moines Union Railway Company, as heretofore set out.

These respondents further admit that they claim and assert that the only rights of the complainants in the said terminal property are their rights under the contracts, Exhibits "I" and "K", and that upon the expiration of the said contracts the complainants will not have the right to use the said terminal property except upon reasonable terms and conditions and upon payments by them of a reasonable compensation for the rights which may be granted to them under contracts which may then be made with the Des Moines Union Railway Company.

Paragraph 26. These respondents further respectfully show to the court that shortly after its organization the Des Moines Union Railway Company commenced to furnish terminal facilities to railroads other than the complainants; and that under leases made by the Des Moines Union Railway Company, with the acquiescence of the complainants and their predecessors, the Chicago, Burlington & Quincy Railroad Company, the receivers of the Chicago, Great Western Railway Company, the Des Moines & Fort Dodge Railroad Company and the St. Paul & Des Moines Railroad Company are all, as tenants, occupying portions of the said terminal property and are dependent upon it, to a greater or less extent, for their terminal facilities in the city of Des Moines.

Paragraph 27. These respondents deny each and every allegation in paragraphs one to twenty-seven inclusive in the said amended bill contained, not heretofore admitted or denied.

Paragraph 28. These respondents further respectfully show to the court that for many years the respondents, Frederick M. Huddell and Frederick C. Huddell have been charged with the management and operation of the property of the Des Moines Union Railway Company, and for many years have devoted a large amount of time and energy to the management and operation of the said property and to its development and to the acquisition of new and additional property, all of which has been done on account of their interest in the said property through the stock held by the firm of F. M. Huddell &

Son, with the full knowledge and acquiescence of the complainants and their predecessors without the payment of any compensation whatever.

That the said F. M. Huddell & Son purchased the stock of the Des Moines Union Railway Company now owned by them and the said Frederick M. Huddell purchased stock of said company from said purchasing committee, in reliance upon the fact that the Des Moines Union Railway Company was the owner of the tenanted property in controversy, and in reliance upon the provisions of the articles of incorporation of the said company as amended, and in reliance upon the fact that the said contract, Exhibit "A", was rescinded and annulled, as aforesaid, and in reliance upon the fact that the complainants and their predecessors had recognized and treated the Des Moines Union Railway Company as the owner of the said tenanted property.

That by reason thereof and by reason of the fact that the predecessors of the Wabash Railroad Company sold a portion of the stock in question to the respondents as property of value and received a valuable consideration therefor, and by reason of the fact that the Chicago, Milwaukee & St. Paul Railway Company, when it purchased the stock and bonds aforesaid from the respondents, purchased with the express understanding that the Des Moines, Northern & Western Railroad Company was the owner of only one-fourth of the capital stock of the Des Moines Union Railway Company and that F. M. Huddell & Sons were the owners of two-eighths thereof, and acquired such interests as it may have acquired from the Des Moines, Northern & Western Railroad Company with the same express understanding, and by reason of the fact that the predecessors of the complainants, under whom they now claim, for a valuable consideration sold and transferred the property in question to the Des Moines Union Railway Company, and that the complainants acquiesced for many years in that company's claim of ownership of the said property and acquiesced and aided in its mortgaging the said property, and by reason of the proceedings in connection with the amendment of the articles of incorporation of the Des Moines Union Railway Company and of such amendments, and by reason of the fact that the complainants stand in the relation of tenants to the Des Moines Union Railway Company under leases recognizing its ownership of the property in question, and by reason of all of the other facts hereinbefore in this answer set out, the complainants are both of them estopped from now or hereafter setting up or claiming that the Des Moines Union Railway Company is not the owner of the tenanted property which is in controversy in this case.

Paragraph 29. That the facts with reference to the ownership of the terminal property and stock in controversy have been known to the complainants and to their predecessors in interest ever since the date of the transactions complained of, and were so known to the complainants and their predecessors in interest for many years prior to the commencement of this suit, and that the complainants have been guilty of laches and their claims are stale and are barred and are not recognizable in a court of equity.

Paragraph 30. That on or about the 1st day of October, 1895, here was filed in the district court of the state of Iowa, in and for Polk county, which court was a court of general jurisdiction, the petition of the Des Moines, Northern & Western Railroad Company, the predecessor in interest of the complainants, the Chicago, Milwaukee & St. Paul Railway Company, against J. F. Joy, O. D. Ashley, Thomas F. Hubbard and Edgar T. Welles, who were the purchasing committee of the Original Wabash Company, and the predecessors in the interest claimed by The Wabash Railroad Company, and that the defense of the said suit was undertaken, managed and carried on by the defendants, by The Wabash Railroad Company. That a copy of the said petition is herewith attached and made a part hereof, marked Exhibit 3.

That thereafter the defendant, The Wabash Railroad Company, filed for the defendants in the said suit an answer, a copy of which is herewith attached and made a part hereof, marked Exhibit 4. That thereafter the said cause came on to be heard by the court without the intervention of a jury, and upon full and final hearing the court entered its judgment therein in favor of the defendants, a copy of the said judgment entry being herewith attached and made a part hereof, marked Exhibit 5. That in the said suit the defendants among other things set up and maintained that the Des Moines Union Railway Company was the owner of the terminal property in question and that the only interests of the Northwestern Company and of the Des Moines, Northern & Western Railroad Company lay close of stockholders in the Des Moines Union Railway Company. That in that case the court sustained said contention and rendered its judgment in favor of the defendants upon said finding and conclusion.

That the said judgment operated as and was an adjudication and termination, as between the parties hereto, that the Des Moines Union Railway Company is the owner of the property in controversy in this case, and by the proceedings in said action the parties are stopped from now asserting otherwise.

## Division II.

Paragraph 31. These respondents admit that since the marking of the lease of date May 10, 1889, of which a copy is attached to the Amended bill as Exhibit "P," the Des Moines Union Railway Company has derived a revenue from switching and other terminal services performed by it, and from depot and other privileges furnished by it, and from rentals of portions of its real estate.

The respondents aver that for a long series of years and until on or about the 12th of March, 1906, the surplus earning of the Des Moines Union Railway Company of the character above indicated were continuously applied by it to the purchase of permanent additions to, and to improvements of its plant and property and to the acquisition of additional property and extensions of its tracks, and to like purposes, and that the said application of the said funds was so made with the full knowledge, acquiescence and approval of each and every of its directors, officers and stockholders, including the complainants and their predecessors in interest.

That these respondents have at all times maintained that under the proper construction of the said lease, Exhibit "P," the Des Moines Union Railway Company was entitled to said surplus earnings and that it received and appropriated the same to its own use with the knowledge and acquiescence of complainants and without objection on their part prior to the 12th day of March, 1906. That since the said date, and upon the contention of the complainants that the Des Moines Union Railway Company was not entitled to the said earnings, they have been kept in a separate fund and have been permitted to accumulate.

These respondents deny that the complainants have any rights to the said earnings and deny that the said complainants are entitled to have them credited upon rentals payable by them as tenants of the Des Moines Union Railway Company; and admit that the Des Moines Union Railway Company has refused to request the trustee under the trust deed of November 1, 1887, to certify and issue additional bonds, and has refused to use the proceeds of such bonds to pay the claims of the complainants on account of surplus earnings used in the purchase of additional property and in making additional improvements. And these respondents deny that the complainants are entitled to any payments, and deny that they are entitled to any payments, and deny that they are entitled to have said bonds so certified or used.

These respondents admit the passage of the resolutions set up in paragraph twenty-nine of the amended bill, but deny that the said resolutions were passed for the purposes or with the understanding or intention which is alleged by the complainants.

These respondents further respectfully show to the court that prior to the making of the contract, Exhibit "R," the negotiations between the complainant, The Wabash Railroad Company, and the Des Moines Union Railway Company, The Wabash Railroad Company requested a modification of the said agreement, Exhibit "P," so as to permit the application of the said surplus earnings to the reduction of the rentals paid by the tenant companies, which request the Des Moines Union Railway Company refused, and that thereupon, and after such refusal, the said The Wabash Railroad Company executed and delivered the contract, Exhibit "R," confirming said agreement, Exhibit "P."

And these respondents aver that the said original agreement, Exhibit "P," has never been modified or changed with respect to the matter of said surplus earnings, but that it has been expressly ratified and confirmed, and aver that the said earnings belong to and are the property of the said Des Moines Union Railway Company. These respondents deny that any sums have been taken from the said surplus earnings for use in payment for equipment, improvements, extensions or property without the knowledge and acquiescence of the complainants and each of them.

Paragraph 32. These respondents deny each and every allegation in paragraphs twenty-eight to thirty-eight of the said amended bill contained, not hereinbefore admitted or denied.

Paragraph 33. These respondents further respectfully show to the court that from and after May 10, 1889, until the present time monthly accounts have been rendered by the Des Moines Union Railway Company to the tenant companies, the complainants and their predecessors in interest, under the contract, Exhibit "P," to the amended bill, and that during said entire period (except only from February 11, 1891, to January 7, 1892) said accounts uniformly did not credit the tenant companies with such surplus earnings, and during said period said accounts were continuously audited and paid by the tenant companies without any claim that they were entitled to any credit on account of said surplus earnings until about March 12, 1906.

That the complainants cannot now be heard to assert that the construction of the said contract so adopted and confirmed by the parties thereto is not the correct construction thereof, and all claims of the complainants on account of said earnings are stale, and are barred by the laches and delay of the complainants and are not cognizable in a court of equity.

Wherefore these respondents pray to be dismissed with their costs in this behalf most wrongfully sustained.

\_\_\_\_\_  
\_\_\_\_\_  
*Solicitors for Respondents.*

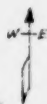
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*Of Counsel.*



## Exhibit No 1

## EXHIBIT No 1.

LEGEND  
ORIGINAL WABASH COMPANY  
St Louis to Albia  
ST. LOUIS COMPANY  
Albia to Des Moines  
NORTHERN COMPANY  
Des Moines to Boone.  
NORTH-WESTERN COMPANY  
Des Moines to Fonda.





(Here follows blue print marked page 197.)

## EXHIBIT No. 2.

*Articles of Incorporation of The Des Moines Union Railway Co. As Amended.*

## Article I.

The name of the corporation shall be the "Des Moines Union Railway Company" and its principal place of transacting business shall be at Des Moines, in the County of Polk and State of Iowa.

## Article II.

The objects of the corporation and the general nature of the business to be transacted shall be, the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops, repair shops, stock yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators, or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines, and also to lease terminal facilities to, and furnish and perform terminal service for all railways whose lines reach or pass through or near the said City of Des Moines; and the corporation shall possess all the powers conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

## Article III.

The capital stock of the corporation shall be two million dollars (\$2,000,000) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds heretofore issued for that purpose, constituted the fair value of said property when so acquired; and all resolutions and proceedings

of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught. Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions: Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company and the present owner of the property known as the Des Moines & St. Louis Railroad; one thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and one thousand shares to the Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit, seven thousand shares or any part thereof shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven-eighths of all the stock theretofore issued, and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered.

The stock shall be transferable only upon the books of the Company by, and with the consent of three-fourths of all the Directors, except in the case the transferee of the stocks is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

#### Article IV.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons who shall be elected by the stockholders at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday in January of each year, and they shall hold their offices for one year and until their successors are elected and qualified, but at all future elections of directors, it shall require the votes of more than seven-eighths of all the stock theretofore issued, to elect any director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other things as may be proper or necessary for the corporation to do; but with respect to the matters above mentioned and all other matters except the ordinary operation of the property, the Board of Directors can act only upon the unanimous vote of the eight members thereof and in order to facilitate the transaction of business, power is expressly con-

ferred upon each of the Directors to delegate by written authority some other person to act or vote for him and in his stead; provided that such authority shall be filed with the secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an executive committee, but such selection must be made by the vote of at least seven members.

The duties and powers of such committee shall be defined in the by-laws.

The board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must be elected and such by-laws enacted by the unanimous vote of the eight members of the board. All vacancies occurring in the board shall be filled by the stockholders at a special meeting in the manner heretofore provided for the election of directors.

#### Article V.

The officers of the corporation shall be a President, Vice-President, Secretary and Treasurer (the offices of Secretary and Treasurer may be filled by one person) to be annually elected from the persons composing the Board of Directors, as hereinbefore provided; and for the purpose, among others, the newly elected board shall convene immediately after the adjournment of the annual meeting of the stockholders. Said officers shall hold their offices for one year until their successors are elected and qualified; and they shall exercise such power and be charged with such duties as usually pertain to the respective offices, subject, however, to the limitations herein contained.

#### Article VI.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

#### Article VII.

The highest amount of indebtedness to which the corporation may at any time subject itself, shall be the amount authorized by law.

#### Article VIII.

Meetings of the Board of Directors may be called by the President, or in case of his absence or disability, by the Vice-President.

and shall be called upon request preferred in writing, by two members of the board.

#### Article IX.

These Articles may be amended by a vote of more than seven-eighths of all the stock in favor thereof, at a meeting of stockholders hereof, of which a notice containing the proposed amendment shall be mailed to each stockholder at his address as disclosed by the transfer books of the Company.

#### Article X.

This corporation shall commence on the fifth day of December, A. D. 1884, and continue fifty years, with the right of renewal.

#### Article XI.

Special meetings of the stockholders may be called by the President or by four directors; but at least ten days' notice of such meeting shall be given to each stockholder by mailing to its or his address as shown by the books of the Company a notice stating the time and place of such meeting.

#### Article XII.

At all meetings of stockholders, each stockholder shall be entitled to cast one vote for each share of stock owned by him or it, as may appear from the books of the Company, such vote may be cast either in person or by proxy, but if by proxy, written authority herefor must be filed with the Secretary at or before the time the meeting convenes.

#### Article XIII.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized, that all its authorized capital stock be subscribed or taken.

#### Article XIV.

The purchase of the property heretofore conveyed to the corporation, the conveyances made in pursuance thereof, the execution of Trust Mortgage to the Central Trust Company of New York, dated

February 28, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 186, at page 525, and the issuance of bonds secured by the same are hereby approved, ratified and confirmed.

#### Article XV.

The proceedings of a meeting held December 19th, 1881, and certain preambles, including a contract executed on the 24th of January, 1882, between the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, entered into by the Wabash, St. Louis & Pacific Railway Company, which now appears as a part of the Articles of Incorporation of the Company, are hereby repealed, stricken out and expunged.

The said amendments to the articles of incorporation of the Des Moines Union Railway Company were signed by F. M. Hall, F. C. Huddell, A. B. Cummins, Homer Seely, L. M. Martin, Chas. M. Hays, James F. How, Wells H. Hodggett, G. M. Dodge and H. D. Thompson.

#### EXHIBIT No. 3.

In the District Court of Iowa in and for Polk County,

No. 7611. Law.

DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY and DES MOINES UNION RAILWAY COMPANY

VS.

JAMES F. JOY, O. D. ASHLEY, THOS. F. HOWARD and EDGAR WELLES.

#### *Petition.*

The plaintiffs for cause of action state:

That they are corporations existing under the laws of the State of Iowa, having their principal places of business at Des Moines in the county of Polk in said state. That the defendants are a Purchasing Committee associated together prior to the year 1886 for the purpose of purchasing various railroad properties to be sold under foreclosure of certain mortgages executed by the Wabash, St. Louis & Pacific Railway Company.



That prior to the year 1885 the Des Moines Northwestern Railway Company had executed a mortgage upon its property, which consisted of a line of railway extending from Fairbairn street in the city of Des Moines, Iowa, to Fonda, in the county of Pocahontas in said state, to secure the payment of certain railway bonds issued by the said Wabash, St. Louis & Pacific Railway Company, and had also executed a lease of its said property for a long term of years to the said Wabash, St. Louis & Pacific Railway Company. That at the same time what is known as the "terminal" in Des Moines, consisting of the property of the Des Moines Union Railway Company, as it now is known, which had been constructed, and which was a part of a railway known as the Des Moines & St. Louis Railway, extending from Fairbairn street in the said city of Des Moines to Albia in the county of Monroe and state of Iowa, had been mortgaged by the said Des Moines & St. Louis Railway Company to secure railway bonds issued by the said Wabash, St. Louis & Pacific Railway Company.

The plaintiffs further state that prior to the 5th day of October, 1886, suits to foreclose the mortgages which had so been executed upon the property of the Des Moines Northwestern Railway Company and upon the terminal property, being a part of the property of the Des Moines & St. Louis Railway Company, and the said properties were about to be sold at said foreclosure sale, the proceeds therefor being then pending in the Circuit Court of the United States in and for the Southern District of Iowa, Central Division. That thereupon the said defendants, acting under the name and style of the "Purchasing Committee" of the Wabash, St. Louis & Pacific Railway Company, entered into negotiations with a certain partnership then doing business in the City of Des Moines, Polk County, Iowa, known as Polk & Huddell, and composed of E. M. Huddell and J. S. Polk, looking to the sale by the said defendants to the said Polk & Huddell of a one-fourth interest in said terminal property and the entire property of the Des Moines Northwestern Railway Company. As a conclusion to said negotiations the said Polk & Huddell on the 5th day of October, 1886, made to the defendants a written proposition, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof; and thereafter, on the 5th day of October, 1886, three of said defendants, to-wit: O. D. Ashley, Thos. H. Hubbard and Edgar T. Keller, accepted the said proposition in and by a written communication, a copy of which is hereto attached, marked Exhibit "B" and made a part hereof. That thereafter, and on the 10th day of September, 1887, the said Polk & Huddell and all of the defendants entered into a certain supplementary written agreement touching the same subject matter, a copy of which is hereto attached, marked Exhibit "C" and made a part hereof.

The plaintiffs further state, that pursuant to said written agreement so entered into the said Polk & Huddell purchased and entered into possession of the said property formerly belonging to the Des Moines Northwestern Railway Company, and, as agreed upon between themselves and the said defendants, a railway corporation known as the Des Moines & Northwestern Railway Company was organized, to which corporation all the rights and interests acquired by the said Polk & Huddell in and by their said contract with the defendants were transferred and set over and the said company being so organized, took possession of the said property lying between Farnham street and Fond du Lac, issued its bonds as provided in said agreement, and for a long time operated said property. The after the said purchase was completed as aforesaid, it was mutually agreed between the said Polk & Huddell, the Des Moines & Northwestern Railway Company and the defendants that what was known as the "terminal" property, that is to say, so much of the property formerly belonging to the Des Moines & St. Louis Railway Company as lay between Farnham street in the city of Des Moines upon the west and Twenty-second street in the city of Des Moines upon the east, should be held and owned by a separate corporation, and thereupon, and during the year 1887, the whole of said property was conveyed to the Des Moines Union Railway Company, a corporation which had theretofore been organized, and the said Des Moines & Northwestern Railway Company received the one-fourth interest in the said terminal property mentioned in the said contract by the delivery to it of one-fourth of the mortgage bonds issued by the said Des Moines Union Railway Company and one-fourth of its capital stock.

The plaintiffs further state, that among other properties then so conveyed and transferred to the said Des Moines Union Railway Company under the said agreement lot seven (7), Block 13th (15), in the original town of Fort Des Moines. That at the time the said conveyance and transfer was so made there was a mortgage upon said property, which mortgage had been a lien thereon prior to the time of the acquisition of the lot for railway purposes, in the sum of Four Thousand Dollars (\$4000) which mortgage the Des Moines Union Railway Company on or about the first day of January, 1891, was compelled to pay. That the total amount paid by the said Des Moines Union Railway Company in payment and satisfaction of the said mortgage which was at the time of the said agreement a lien upon the said property, was Eleven Thousand Nine Hundred Seventy-four and 81/100 Dollars (\$11,974.81).

The plaintiffs further show that a certain right of way, being a part of said terminal property upon which the railway was then operated through lots fifty-three (53) and fifty-four (54), Blocks 1

On the Addition to the City of Des Moines, was found not to have been acquired, and the said Des Moines Union Railway Company was compelled to acquire the same at a cost to it of Seven Hundred and Sixty-six Dollars (\$766.00), that being the lowest sum for which the same could be obtained.

The plaintiffs further state, that the said Des Moines Union Railway Company has been compelled to pay rent for a certain switch known as the distillery switch, with interest, amounting to Fourteen Hundred Eighty-five and 88-100 Dollars (\$1485.88). That said switch was a part of the property operated by the terminal company, and should have been free of any lien or incumbrance.

The plaintiffs further state, that of the above named payments due the Des Moines & Northwestern Railway Company or its assigns has been compelled to pay the sum of Twenty-seven Hundred Eighty-one and 68-100 Dollars (\$2781.68) which, if the said terminal property had been free and clear of incumbrance, would not have been required to be paid.

The plaintiffs further state, that the Des Moines, Northern & Western Railroad Company, one of the plaintiffs herein, is now the owner of all the rights, interests, claims and demands heretofore set forth arising in favor of the said Des Moines & Northwestern Railway Company.

Plaintiffs further state, that the defendants are non-residents and each of them is a non-resident of the state of Iowa.

Wherefore plaintiffs demand judgment against the defendants in the sum of Twenty-seven Hundred Eighty-one and 68-100 Dollars (\$2781.68), with interest from \_\_\_\_\_, and costs of suit.

They further pray that a writ of attachment may issue against the lands and tenements, goods and chattels, rights and credits of the defendants.

CUMMINS & WRIGHT,

*Attorneys for Plaintiff.*

STATE OF IOWA,

*Polk County, ss:*

F. M. Hubbell being first duly sworn, upon his oath says, that he is the President of the Des Moines, Northern & Western Railroad Company; that he has read the foregoing petition and verily believes the statements therein contained are true.

F. M. HUBBELL.

Subscribed and sworn to before me this 30th day of September, 1895,

[SEAL.]

J. P. HEWITT,  
*Notary Public, Polk County, Iowa.*

EXHIBIT "A"

New York, October 9, 1886.

To the Purchasing Committee of the Wabash, St. Louis & Pacific Ry. Co.

GENTLEMEN:—

We make the following proposition in regard to the Des Moines Northwestern Railway: The mortgage to be foreclosed to cover all advances made by the Wabash Company to the D. M. N. W. Ry. Co. A good and perfect title free from all liens and incumbrances (including all claims the Receivers may have against it) to be made to Polk & Hubbell for said railway (and all its property, rights, franchises, all its interest in the equipment), and a one-fourth interest in the terminal property at Des Moines and 5037 shares of stock in the D. M. N. W. Ry. Co.

Upon the delivery of the property above named in the condition as to title as above specified, Polk & Hubbell are to pay the Committee a \$450,000 first mortgage 5% bond. The issue to be only \$450,000, and to be secured by a first mortgage on the property conveyed, to-wit: on that part of said railway lying between Faruham street in Des Moines and the town of Fonda and equipment. To run two years from the time the title is delivered to Polk and Hubbell, and to be redeemable at their option at any time before maturity upon payment of principal and accrued interest, and if paid within one year from the time the title is delivered to Polk & Hubbell, then \$450,000 cash shall discharge said mortgage and debt. Polk & Hubbell to have all the stock of the new company. As soon as the contract is completed Polk & Hubbell are to make arrangements to standard gauge the road. If accepted, the details and plans of carrying out the above is to be agreed upon and embodied in a contract to be signed by the necessary parties.

POLK & HUBBELL.

## EXHIBIT "B."

New York, October 9, 1886.

The foregoing proposition is satisfactory to us, and we agree as a Committee acting under the contract of July 15th, 1885, between ourselves and certain bondholders, to take all measures in our power to have the same fully performed.

(Signed)

O. D. ASHLEY.  
THOS. H. HUBBARD.  
EDGAR T. WELLES.

This Memorandum of Agreement made and entered into this 10th day of September, A. D. 1887, by and between Messrs. Polk & Hubbell, parties of the first part, and James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, as a Purchasing Committee under contract of July 15th, 1885, parties of the second part, Witnesseth:

That Whereas, under date of October 9th, 1886, the parties to this agreement entered into a certain conditional contract for the foreclosure and sale of the Des Moines Northwestern Railway, as shown by copy of proposition of the first party hereto and acceptance of the second party hereto, attached to this agreement and made part hereof;

And Whereas, in pursuance of said contract said foreclosure and sale is to take place as provided in said agreement, and said parties of the first part expect and intend to become purchasers at said sale;

Now Therefore, it is further agreed between the parties above named, as follows:

1st. For the purpose of enabling Messrs. Polk & Hubbell to bid in the Des Moines Northwestern Railway at the foreclosure sale above referred to, the Committee will furnish to said Polk & Hubbell the general mortgage bonds required to make payment of said bid, so far as the same may be required and can be used in that way; the cash payment required by the decree shall be advanced by Messrs. Polk & Hubbell and credited upon the purchase price of the property above mentioned.

2d. A decree of foreclosure and sale shall be entered as soon as possible after the first day of the next term of the Circuit Court of the United States for the Southern District, Central Division of Iowa. Messrs. Polk & Hubbell will see that the amount of the cash payment is made as small as possible, and to that end will negotiate for a reduction of the Master's fees and other costs, so far as the same can be obtained. The day of sale shall, moreover, be made as soon as possible.

3d. The requirement of the agreement hereto annexed, for the delivery to the Committee by Messrs. Polk & Hubbell of a bond for \$450,000, shall be satisfied by the delivery of such bond secured by first mortgage as provided in proposition of October 9th, 1886, executed by a new corporation organized for that purpose, and holding the property disposed of at such sale.

4th. As soon as practicable after the signing of this stipulation the Des Moines Northwestern Railway shall be turned over to Messrs. Polk & Hubbell, and thenceforth regarded as having been transferred under the contract hereto annexed.

5th. Simultaneously with the execution and delivery of said bond the Committee will convey to Messrs. Polk & Hubbell, or their assigns, the one-fourth interest in the terminal property at Des Moines, and will transfer also 5,037 shares of stock of the Des Moines Northwestern Railway Company, and also the interest of the parties of the second part in the equipment of said Des Moines Northwestern Railway. It is hereby understood that the rolling stock of the New York & Pacific Car Trust Association is not included in this agreement.

Simultaneously with the conveyance above mentioned of one-fourth interest in the terminal property at Des Moines, the same shall be mortgaged back to the Purchasing Committee for the further security of the said \$450,000. In case, however, the terminal property at Des Moines shall be merged in a terminal company either before or after the transfer of one-fourth interest as above, the bond and stock received from the Terminal Company in exchange for said one-fourth interest shall be transferred in lieu of the property to Messrs. Polk & Hubbell or their assigns, or transferred by them to the Committee to be held by the Committee as a further security for the payment of the \$450,000 above mentioned.

6th. The transfer of the bonds mentioned in paragraph one of this agreement, to Messrs. Polk & Hubbell, and the execution and delivery of the bond and mortgage mentioned in paragraph three, shall be consummated, if possible, on the same date as the delivery of the

Master's deed to Messrs. Polk & Hubbell, or their assignees; said mortgage being recognized as a purchase money mortgage.

POLK & HUBBELL.

Purchasing Committee: JAMES F. JOY,  
O. D. ASHLEY,  
THOS. H. HUBBARD,  
EDGAR T. WELLES.

STATE OF IOWA,

*Polk County, ss:*

F. M. Hubbell being first duly sworn, upon his oath says, that he is the President of the Des Moines, Northern & Western Railway Company, one of the defendants in the above suit. That the defendants are non-residents of the State of Iowa, and that each of them is a non-resident of said State, and that personal service of the original notice herein cannot be made upon the said defendants, or either of them within this State.

F. M. HUBBELL.

Subscribed and sworn to by the said F. M. Hubbell this — day of September,

[SEAL.]

J. P. HEWITT,  
*Notary Public, Polk County, Iowa.*

The plaintiffs elect to have the original notice herein published in the Des Moines Leader, a newspaper published in the City of Des Moines, Polk County, Iowa.

CUMMINS & WRIGHT,  
*Attorneys for Plaintiff.*

Let the publication be made as requested.

J. G. JORDAN,  
*Clerk.*

By EDWIN HULT,  
*Deputy.*

In the District Court of Iowa in and for Polk County.

DES MOINES, NORTHERN & WESTERN R. R. Co. et al., Plaintiffs,

VS.

JAMES F. JOY et al., Defendants.

*Amendment to Petition.*

Comes now the plaintiff, the Des Moines Northern & Western Railroad Company, and in response to the motion to make its petition more specific filed herein January 26th, 1896, avers that the Des Moines & Northwestern Railway Company acquired the interest of the said Polk & Hubbell in the said contract with the defendants in the following manner: At the time the said contract was made with the said defendants it was agreed by and between the membership of the firm of Polk & Hubbell that all the rights and property acquired by them under and by virtue of the said contract with the Purchasing Committee should be assigned and conveyed to a corporation to be organized known as the Des Moines & Northwestern Railway Company, and if said agreement had been carried out the one-fourth interest in the said terminal property set forth in the original petition would have been so conveyed and transferred to the Des Moines & Northwestern Railway Company. That before the said agreement was executed it was modified as follows, to-wit: That an independent corporation known as the Des Moines Union Railway Company should be organized, which should become the owner of the said terminal property, and that in lieu of the undivided interest in the said terminal property which was to be so conveyed by the said Polk & Hubbell to the said Des Moines & Northwestern Railway Company the said Des Moines & Northwestern Railway Company should have and receive one-fourth of the capital stock of the said Des Moines Union Railway Company. That in pursuance of such modified agreement the Des Moines & Northwestern Railway Company was organized, and received a conveyance of all said property except the terminal property, and the Des Moines Union Railway Company was organized, and issued to the Des Moines & Northwestern Railway Company upon the verbal order of the said Polk & Hubbell one-fourth of its capital stock; and thereupon the said Polk & Hubbell verbally assigned and transferred, in addition to the said one-fourth of the capital stock of the Des Moines Union Railway Company, all the rights and interests which they had acquired in or pertaining to the said terminal property from the defendants and under the contract set forth in the original petition; and in the manner the said Des Moines & Northwestern Railway Company became the owner of the cause of action which is herein set out.



Answering the second requirement of the said motion, the said plaintiff says that in December, 1891, the Des Moines & Northwestern Railway Company, pursuant to the statutes of Iowa, consolidated all its rights, properties, privileges, franchises, cause of action and stock with a corporation known as the Des Moines & Northern Railway Company, and the said consolidated company issued its bonds in an amount not necessary to herein state, and secured the same by a mortgage upon all its property, including the one-fourth of the capital stock of the Des Moines Union Railway Company, and including the said cause of action against the defendants. That thereafter the said mortgage was foreclosed in the Circuit Court of the United States for the Southern District of Iowa, Central Division, and all the property embraced in the said mortgage, including the cause of action herein was sold at public sale under an execution in the said foreclosure proceedings. That at such sale the said property, including the said cause of action, was purchased by a purchasing committee composed of G. M. Dodge, F. M. Hubbell and F. C. Hubbell. That thereafter the present plaintiff, being a corporation known as the Des Moines Northern & Western Railroad Company, was organized in accordance with the laws of the State of Iowa, and the said Purchasing Committee sold, assigned and transferred to the plaintiff by a written instrument all the property that it had acquired at the said foreclosure sale; and thus this plaintiff became the owner of the cause of action set forth in the petition arising out of the contract with the defendants.

Answering the third of the requirements of said motion, the said plaintiff respectfully shows that it is fully answered in the foregoing answers to the first and second requirements.

(Signed)

CUMMINS, HEWITT & WRIGHT,

*Attorneys for Plaintiff.*

STATE OF IOWA,

*Polk County, ss:*

F. C. Hubbell being first duly sworn, upon his oath says that he is the Superintendent of the Des Moines, Northern & Western Railroad Company; that he has read the foregoing amendment to the petition and verily believes the statements therein contained are true.

(Signed)

F. C. HUBBELL.

Subscribed and sworn to before me this 21st day of December, 1896,

(Signed)

CRAIG T. WRIGHT,

[SEAL.]

*Notary Public, Polk County, Iowa.*

## EXHIBIT No. 4.

In the District Court of Iowa in and for Polk County.

No. 7614. Law.

DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY et al.  
Plaintiffs,

VS.

JAMES F. JOY et al., Defendants.

*Answer.*

Come now defendants, O. D. Ashley, Thomas F. Hubbard and Edgar T. Welles, and for answer to the plaintiff's petition as amended, say:

That said defendant, James F. Joy, died prior to January, 1897.

That they admit that the plaintiffs are corporations organized under the laws of Iowa, and having their principal place of business at Des Moines, Iowa.

That they admit that defendants are non-residents of the State of Iowa.

That they admit that these defendants with said James F. Joy were constituted a "Purchasing Committee" under a contract dated July 15, 1885, between themselves and certain bondholders of Wash. St. Louis & Pacific Railway Company, but deny that their powers and duties are correctly or fully set forth in the petition.

That they admit that these defendants with said James F. Joy in their capacity as a "Purchasing Committee," as defined in said contract appointing them, and not otherwise, did, on or about the 10th day of September, 1887, enter into certain written agreements with Polk & Hubbell for the sale of certain stock and bonds of the Des Moines Northwestern Railway Company, and certain stock and bonds of Des Moines Union Railway Company. "That whether the copies, Exhibits "A," "B," and "C," are true copies of said written agreements, or any part of them, these defendants have neither knowledge or information sufficient to form a belief.

That they deny that they intended to, or did, or were, by said Polk and Hubbell, understood to agree to warrant the title of said terminal property, or to incur either personally, or as a "Purchasing Committee," or on behalf of their principals, liability whatever in respect to defects in title or incumbrances upon said terminal property.

That they deny that they are either personally or as a "Purchasing Committee," or on behalf of their principals, liable or indebted to plaintiff in the sum of \$2,781.68, or in any other sum or amount, whatever.

That they deny that plaintiffs are, or ever were the owners of the claims sued on.

That they deny each and every allegation in the petition not herein admitted.

Wherefore, defendants demand judgment for costs.

BAILY & BALLREICH,  
*Attorneys for Defendants.*

EXHIBIT No. 5.

In the District Court of Iowa in and for Polk County.

No. 7614. Law.

DES MOINES, NORTHERN & WESTERN RAILROAD COMPANY, Plaintiff,

vs.

JAMES F. JOY et al., Defendants.

*Judgment.*

This cause was heretofore tried in the court without a jury, the plaintiff appearing by Cummins, Hewitt & Wright, its attorneys, and the defendants appearing by Baily, Ballreich & Preston, their attorneys. The court having heard the evidence and arguments of counsel took the case under advisement.

And now, to-wit, on this 5th day of August, 1899, this cause came on for decision and judgment. The court being fully advised in the premises finds for the defendants and against the plaintiff.

It is therefore ordered and adjudged that plaintiff's cause of action be and it is denied and this action dismissed on the merits; that the attachment be discharged and the attached property released therefrom, and that defendants have and recover from plaintiff, Des

Moines Northern & Western Railroad Company, the costs of this action as taxed by the clerk, and that execution issue therefor.

Endorsed: Filed July 20, 1909 E. R. Mason, Clerk.

*(Stipulation for the Withdrawal from Files of Amendment to Bill of Complaint and Answer Thereto, and for Amendment of Amended Bill of Complaint.)*

It is hereby stipulated and agreed in the above cause that the Amendment to the Bill of Complaint filed by Complainants November 9, 1912, in relation to the railroad and property between Farnham street and Twenty-eighth street may be and is withdrawn from the files and every allegation therein contained. And the Answer thereto, or Amendment to the Answer of Respondents filed on or about December 2nd, 1912, is also withdrawn from the files and every allegation therein contained is withdrawn by the Respondents and it is agreed that the cause shall proceed to trial as if neither of the aforesaid pleadings had been filed, but Respondents may file an Amendment to their Answer as they may be advised.

It is also agreed that Complainants may and do amend their Amended Bill of Complaint as now on file and printed, by striking out of the first line of the last paragraph of division 9 of the Amended Bill as last printed, the word "Northwestern", and substituting therefor the [word] "Northern", and striking out the word "Northern" in the 7th line of said paragraph on page 17 of the Amended Bill as last printed. The intent hereof being to change the allegation in the Amended Bill in reference to conveyance made by either of the railroad companies to the Des Moines Union Railway Company on page 17 of the printed Amended Bill of Complaint, as Amended, so as to show merely such conveyances as having been made by the Des Moines & St. Louis Railroad Company and the St. Louis, Des Moines & Northern Railway Company and not any conveyance to the Des Moines, Northwestern Railway Company.

J. C. COOK,  
W. H. BLODGETT,  
ROBERT RYAN,  
J. L. MINNIS,

*Solicitors for Complainants,*  
N. T. GUERNSEY AND  
PARKER, PARRISH & MILLER,  
*Solicitors for Respondents*

Endorsed: Filed Feb. 6, 1913. Wm. C. McArthur, Clerk. B. Louis J. Adelman, Deputy.

*Amendment to Bill of Complaint.*

Now come the complainants in the above cause, and upon leave of the court first had, amend their Bill of [Complaint] in the following two particulars:

1. In the closing paragraph of Division Nine of the bill as printed being on page 19 of said printed bill, strike out the following words: "the Northwestern Company also conveyed to the Terminal Company, by quit claim deed, all the property then held by it, and being as property referred to in the contract of January 2nd, 1882 (Exhibit "A" hereto attached), in the City of Des Moines, and which was covered by and embraced in the terms of said written contract; and", so that it will appear that only the St. Louis Company and the Northern Company made deeds to the Des Moines Union Railway Company.

2. In the first line of the second paragraph of Division Thirty-one of the printed bill, being on page 55 of the bill as printed, after the words, "That your orator, the Wabash Railroad Company", insert the following words: "and also the predecessors of your orator the Chicago, Milwaukee & St. Paul Railway Company," so that by the amendment it will show that not only the Wabash Railroad Company, but also the corporation which then owned or operated the Boone and the Fonda lines accepted the resolutions of the Terminal Company adopted February 11, 1891, and January 7, 1892, as an amicable adjustment, etc.

J. C. COOK,  
W. H. BLODGETT,  
J. L. MINNIS AND  
ROBERT RYAN.

*Attorneys and Solicitors for Complainants.*

Endorsed: Filed Dec. 26, 1913. Wm. C. McArthur, Clerk.

*Amendment to Amended Bill of Complaint.*

Now come the plaintiffs or complainants in the above cause, and by leave of the court first had, amend the Bill of Complaint by striking out the last section of Paragraph Nine of the "Amended Bill of Complaint as Amended" and heretofore printed and on file, and substitute therefor the following, to-wit:

At about the same time, to-wit, in November, 1887, the St. Louis, Des Moines & Northern Railway Company conveyed by quit claim deed the following lots and parcels of land in the city of Des Moines, Iowa, to-wit: Lots Seven (7) and eight (8) in Block Twenty-two (22) of Keene and Poindexter's Addition and fractional lot eight (8) in Block Twenty-two (22) of Hoxie's Addition, all subject to the right of way of the Chicago, Rock Island and Pacific Railway Company over the same; also Lot six (6) in Block thirty-one (31) and Lots five (5) six (6) and seven (7) eight (8) and nine (9) in Block thirty-three, all in Keene and Poindexter's Addition to Fort Des Moines also Official Plat Lot Five (5) in the northeast quarter of Section eight (8) and Official Plat Lots two (2) and thirteen (13) in northwest quarter of Section Nine (9), all in Township seventy-eight (78) Range Twenty-four (24) West 5th P. M. Iowa, all included in the corporate limits of the City of Des Moines. Which said lots and parcels of land were covered by and embraced in the terms of said written contract of January 2, 1882. But the said St. Louis, Des Moines & Northern Railway Company never made any deed or conveyance or transfer to the Des Moines Union Railway Company of any interest which said St. Louis, Des Moines & Northern Railway Company had acquired or held or was holding in the terminal property under or by virtue of the said written contract of January 2, 1882, nor did it or any of its successors in title or in interest make any other conveyance or transfer than said quit claim deed to said lots. And that the Des Moines Northwestern Railway Company never made any deed or conveyance of any kind to the Des Moines Union Railway Company, nor did any of its successors in interest or in title or right ever make any transfer or conveyance in any form to the Des Moines Union Railway Company; and the deeds or conveyance made as aforesaid constitute the only evidence of title, and create the only right that the Terminal Company has or ever had in the property therein described.

J. C. COOK,

J. L. MINNIS,

WILLIS H. BLODGETT,

*Solicitors for Plaintiffs and Complainants.*

Endorsed: Filed May 13, 1915. Wm. C. McArthur, Clerk.

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